

Halsbury's Laws of England/FORESTRY (VOLUME 52 (2009) 5TH EDITION)/1. FORESTRY ADMINISTRATION/(1) FOREST LEGISLATION AND COURTS/(i) In general/1. Historical background.

FORESTRY (VOLUME 52 (2009) 5TH EDITION)

1. FORESTRY ADMINISTRATION

(1) FOREST LEGISLATION AND COURTS

(i) In general

1. Historical background.

State forests for the production of timber are a relatively recent creature of statute¹. Since very early times there have been royal forests, the purpose of which was to provide hunting and relaxation for the Sovereign; the right to hunt was reserved to the Sovereign, although anyone could cut wood or clear a wood for agricultural use. These forests had their own officers, their own courts and their own system of law² but by the sixteenth century the forest organisation was already in a state of decay³. As the Sovereign's prerogative to hunt declined, forest acquired its present meaning of wild land covered mainly by trees. The old forest law nevertheless remained theoretically in force, although for the most part obsolete, in certain forests until 1971, when it was abrogated except in so far as it related to the appointment and functions of verderers⁴.

In 1829 certain powers of the forestal offices, including forest courts, became vested in the First Commissioner of His Majesty's Woods, Forests and Land Revenues⁵, and in 1832 the Commissioner's powers were handed over to the Commissioners of Woods, Forests, Land Revenues, Works and Buildings⁶. When in 1851 responsibilities were separated, the greater part of the control of the royal forests was handed over to the Commissioners of Woods, Forests and Land Revenues⁷ (later the Commissioners of Crown Lands and now the Crown Estate Commissioners⁸).

In 1923 provision was made for transferring to and vesting in the Forestry Commissioners woods and forests⁹ which were under the management or control of the Commissioners of Crown Lands or vested in or held on lease by a government department¹⁰, and extensive transfers were made under that power¹¹. Rights and liabilities of the Treasury in respect of advances made for forestry purposes, or in respect of property transferred under this provision which had been acquired by means of advances, were transferred to the Forestry Commissioners; and any sums payable to the Commissioners in respect of those advances had to be paid into the Forestry Fund¹². That Fund has now been wound up and the balance in it paid to the Commissioners¹³.

1 Ie the Forestry Act 1919 (now repealed and replaced by the Forestry Act 1967).

2 See **CROWN PROPERTY** vol 12(1) (Reissue) PARA 227.

3 Manwood's Forest Laws (1598 Edn) Preface, 16.

4 See the Wild Creatures and Forest Laws Act 1971 s 1(2). The Crown's prerogative right to wild creatures (except royal fish and swans) was also abolished (s 1(1)(a)) as were any franchises of forest (s 1(1)(b)).

5 See the Crown Lands Act 1829 s 95 (repealed). Such offices included wardens, Chief Justice and Justices in Eyre of Forests, Chases and Parks.

6 Crown Lands Act 1832 s 1 (repealed).

7 Crown Lands Act 1851 s 2 (repealed).

8 As to the constitution etc of the Crown Estate Commissioners see **CROWN PROPERTY** vol 12(1) (Reissue) PARA 280 et seq.

9 'Woods and forests' included any land used or capable of being used for or in connection with afforestation: see the Forestry (Transfer of Woods) Act 1923 s 7 (repealed).

10 Forestry (Transfer of Woods) Act 1923 s 1(1) (repealed).

11 See the Forestry (Transfer of Woods) Order 1924, SR & O 1924/386 (now lapsed). For local orders made under this power and powers of a similar nature contained in the Crown Lands Act 1936 s 5 (repealed) see the classified list of local statutory orders contained in the annual volumes of Statutory Rules and Orders and Statutory Instruments.

12 Forestry (Transfer of Woods) Act 1923 s 2(1) (repealed). The transfer was deemed to have taken effect on 1 April 1922: s 2(3) (repealed).

13 See the Forestry Act 1967 s 41(1); and PARA 51.

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2. Organisation of state forests.

In 1919 provision was made for the appointment of eight Forestry Commissioners, of whom one was to be chairman¹. The Commissioners had the general duty of promoting the interests of forestry, the development of afforestation and the production and supply of timber in the United Kingdom². In 1945 all land vested in the Forestry Commissioners in England and Wales was transferred to the then Minister of Agriculture, Fisheries and Food³: however, such land as was placed at the disposal of the Commissioners by the minister remained under the general control and management of the Commissioners for the purpose of planting and its use in the carrying out of their statutory duties⁴. In 1947 forestry dedication covenants were introduced⁵ and in 1951 the Commissioners were given wide powers to establish and maintain in Great Britain adequate reserves of growing trees⁶ and to control tree felling⁷. In England the minister currently concerned with forestry is the Secretary of State for Environment, Food and Rural Affairs⁸; in Wales forestry is, with specified exceptions, the responsibility of the Welsh Ministers⁹.

1 Forestry Act 1919 s 1(1) (repealed). In 1945 the Forestry Commission was reconstituted to comprise a chairman and not more than nine other Commissioners: Forestry Act 1945 s 1(1) (repealed). As to the duties and powers of the Forestry Commissioners see PARA 34 et seq.

2 Forestry Act 1919 s 3(1) (repealed). 'United Kingdom' means Great Britain and Northern Ireland: Interpretation Act 1978 s 5, Sch 1. 'Great Britain' means England, Scotland and Wales: Union with Scotland Act 1706, preamble art I; Interpretation Act 1978 s 22(1), Sch 2 para 5(a). Neither the Isle of Man nor the Channel Islands are within the United Kingdom.

3 The style of the Minister of Agriculture and Fisheries was changed to Minister of Agriculture, Fisheries and Food by the Transfer of Functions (Ministry of Food) Order 1955, SI 1955/554, made under the Ministers of the Crown (Transfer of Functions) Act 1946. The Ministry was dissolved in 2002: see the Ministry of Agriculture, Fisheries and Food (Dissolution) Order 2002, SI 2002/794. As to the current ministerial responsibility for forestry matters see the text and notes 8-9.

4 See PARA 38.

5 See PARA 116.

6 Forestry Act 1951 s 1(1) (repealed; see now the Forestry Act 1967 Pt I (ss 1-8), Pt II (ss 9-36); and PARA 120 et seq).

7 See the provisions mentioned in note 6. The Commissioners may make and enforce byelaws in respect of land under their management to preserve trees and protect amenities: see PARAS 41-42.

8 The office of Secretary of State for Environment, Food and Rural Affairs was constituted by the Secretaries of State for Transport, Local Government and the Regions and for Environment, Food and Rural Affairs Order 2001, SI 2001/2568 (amended by SI 2002/2626), which also made provision for the transfer to the Department for Environment, Food and Rural Affairs of the functions of the former Minister of Agriculture, Fisheries and Food relating to forestry (see note 3). As to transfer of functions generally see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 363. Certain matters relating to felling licences in respect of trees to which a tree preservation order relates may, however, be referred to the Secretary of State for Communities and Local Government: see PARA 61.

In any enactment, 'Secretary of State' means one of Her Majesty's principal Secretaries of State: see the Interpretation Act 1978 s 5, Sch 1. The office of Secretary of State is a unified office, and in law each Secretary of State is generally capable of performing the functions of all or any of them: see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 355. As to government departments and ministerial responsibilities generally see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 427 et seq.

9 Statutory functions relating to forestry, so far as exercisable in relation to Wales, are now almost exclusively the responsibility of the Welsh Ministers following the establishment of the Welsh Assembly Government under the Government of Wales Act 2006. The functions so conferred on the Welsh Ministers are:

- 1 (1) those specifically transferred to them by Order in Council under s 58;
- 2 (2) those previously transferred to the National Assembly for Wales by Order in Council under the Government of Wales Act 1998 s 22 and subsequently transferred to the Welsh Ministers under the Government of Wales Act 2006 Sch 11 paras 26, 30; and
- 3 (3) any functions specifically conferred by enactments made subsequent to the passing of the Government of Wales Act 1998 and subsequently transferred to the Welsh Ministers under the Government of Wales Act 2006 Sch 11 para 30.

For the Orders in Council made under the Government of Wales Act 2006 s 58 and the Government of Wales Act 1998 s 22 (and now having effect under the Government of Wales Act 2006 s 58 by virtue of Sch 11 paras 26, 30) see **CONSTITUTIONAL LAW AND HUMAN RIGHTS**. No functions relating to forestry have been specifically conferred by any enactment made subsequent to the passing of the Government of Wales Act 1998. For provisions as to the exercise of the transferred functions see the Government of Wales Act 2006 Sch 3, Sch 11 paras 33-35; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS**. As to the Welsh Ministers and the establishment of the Welsh Assembly Government generally see Pt 2 (ss 45-92); and **CONSTITUTIONAL LAW AND HUMAN RIGHTS**.

Forestry also falls within the legislative competence of the Assembly and an Act of the Assembly may make provision with regard to forestry in Wales, subject to certain exceptions with regard to hunting with dogs and import and export control of plants and seeds: see the Government of Wales Act 2006 s 108, Sch 7 Pt 1 para 1; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS**.

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3. Forestry legislation and its scope.

The law relating to forestry is now mainly contained in the Forestry Act 1967, which is a consolidation of the Forestry Acts 1919 to 1963 and related legislation¹. It applies to Great Britain but not to Northern Ireland², and enables regulations to be made for related purposes³. It provides for the continued existence of the Forestry Commission⁴ and sets out the general duties of the Forestry Commissioners⁵.

Forestry is not included in the definition of 'agriculture' for the purposes of the principal legislation relating to agricultural land⁶, although provisions relevant to forestry are included in other agricultural legislation⁷.

Rural development boards⁸ are concerned with both agriculture and forestry in meeting the special needs in the development of rural areas of hills and uplands⁹, which include difficulties in forming commercial units of agricultural land in those areas and the need for an overall programme for guidance in making decisions as to the use of land in such areas for agriculture and forestry, so that those two uses are complementary¹⁰. That overall programme must have regard, among other things, to the special economic considerations and long-term nature of forestry¹¹. It is the duty of a rural development board and of the Forestry Commission to co-ordinate the preparation and implementation of their proposals and programmes for the board's area, and for that purpose to consult together at all stages, and where necessary to act in concert¹².

1 See the short title to the Forestry Act 1967. The legislation consolidated by that Act was repealed by Sch 7.

2 Forestry Act 1967 s 51(2). As to the meaning of 'Great Britain' see PARA 2 note 2.

3 See the Forestry Act 1967 s 32; and PARA 37.

4 See the Forestry Act 1967 ss 1(1), 49(1); and PARA 34 et seq.

5 See the Forestry Act 1967 s 1(2)-(4); and PARAS 38-43.

6 See the Agriculture Act 1947 s 109(5); the Agriculture Act 1967 s 75(2); the Agriculture Act 1970 s 37(4); the Agricultural Holdings Act 1986 s 96(4); the Agricultural Tenancies Act 1995 s 38(2); and **AGRICULTURAL LAND** vol 1 (2008) PARA 324.

7 See in particular the Plant Varieties and Seeds Act 1964; and **AGRICULTURAL PRODUCTION AND MARKETING** vol 1 (2008) PARA 906 et seq; the Plant Health Act 1967 s 1(2)(a) (under which the Forestry Commissioners are a competent authority for protecting forest trees and timber (which includes all forest products) from attack by pests: see PARAS 38, 62 et seq; and **AGRICULTURAL PRODUCTION AND MARKETING** vol 1 (2008) PARA 1016 et seq); the Countryside Act 1968 ss 23-24A; and PARAS 38-39, 45, 121; and the Farm Land and Rural Development Act 1988 s 2; and **AGRICULTURAL PRODUCTION AND MARKETING** vol 1 (2008) PARA 1351. See also the Rent (Agriculture) Act 1976 s 1(1)(a)(v), (b), (3), Sch 1; PARA 52; and **LANDLORD AND TENANT** vol 27(2) (2006 Reissue) PARA 1136; and the Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026; and PARA 100 et seq.

8 As to rural development boards see **AGRICULTURAL LAND** vol 1 (2008) PARA 659 et seq.

9 See the Agriculture Act 1967 s 45(1); and **AGRICULTURAL LAND** vol 1 (2008) PARA 659.

10 See the Agriculture Act 1967 s 45(2); and **AGRICULTURAL LAND** vol 1 (2008) PARA 659.

11 See the Agriculture Act 1967 s 45(3); and **AGRICULTURAL LAND** vol 1 (2008) PARA 659.

12 See the Agriculture Act 1967 s 46(3); and **AGRICULTURAL LAND** vol 1 (2008) PARA 659.

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4. European legislation.

It is doubtful whether forestry forms part of agriculture within the meaning of the EC Treaty, although live trees are classified as 'agricultural products'¹.

A Standing Committee on Seeds and Propagating Material for Agriculture, Horticulture and Forestry has been established to carry out the duties devolving upon it from the European Directives on the marketing of seeds and propagating material². The committee may consider any other question under such Directives and referred to it by the chairman, either on his own initiative or at the request of the representative of a member state. European Directives further lay down external quality standards for forest reproductive material marketed within the European Union³ and make provision to prevent the introduction into member states of harmful organisms of plants or plant products⁴.

1 See the EC Treaty art 32, Annex I; and **AGRICULTURAL PRODUCTION AND MARKETING** vol 1 (2008) PARA 701. In connection with EC law, and the Common Agricultural Policy, generally see **AGRICULTURAL PRODUCTION AND MARKETING** vol 1 (2008) PARA 701 et seq.

2 EEC Council Decision 66/399 (OJ 1966, p 2289).

3 See EC Council Directive 1999/105 (OJ L11, 15.1.2000, p 17) on the marketing of forest reproductive material; and see further PARA 100 et seq.

4 See EC Council Directive 2000/29 (OJ L169, 10.7.2000, p 1) on protective measures against the introduction into the Community of organisms harmful to plants or plant products and against their spread within the Community; and PARA 63 et seq.

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5. Local legislation.

Some forests, particularly the old royal forests, were the subject of extensive local legislation¹, but the only remaining Acts having local effect of any importance are those relating to the New Forest² and the Forest of Dean³.

1 Many local Acts were repealed or amended by the Crown Estate Act 1961 Sch 3 (repealed), and most of the remaining statutes have been rendered obsolete and repealed by the Wild Creatures and Forest Laws Act 1971 Schedule.

2 See the Dean and New Forests Act 1808 (mainly repealed, but the residue has local and personal application); the Inclosure Act 1845 s 13 (repealed in part); the New Forest Act 1877 (repealed in part); the New Forest Act 1879; the New Forest Act 1949; the New Forest Act 1964; and the New Forest Act 1970. See also PARA 6.

3 See the Dean and New Forests Act 1808; the Dean Forest Act 1819; the Dean Forest (Mines) Act 1838; the Inclosure Act 1845 s 13; the Dean Forest Act 1861; the Dean Forest (Mines) Acts 1871 and 1904; and the Dean Forest Act 1906.

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6. The New Forest.

The Forestry Commissioners have various duties and powers in connection with the New Forest. The Commissioners were charged with the duty of preparing plans designating the land to which are attached rights of common over the forest, and certified¹ copies of them are conclusive for all purposes of what rights of common over the forest, if any, are attached to any land shown².

After consultation with the verderers³, the Commissioners may carry out such work as appears to them to be necessary, or as the Secretary of State may direct, for securing the proper drainage of the forest, the maintenance of bridges and the clearance of seedlings and forest debris⁴. They may inclose so much forest land as the verderers may authorise⁵ for the growth of timber, subject to payment to the verderers of an agreed amount in respect of the inclosure⁶. Similarly, with the like authorisation, they may inclose parts of the ancient and ornamental woods in the forest for the purpose of regeneration, and may carry out in the inclosures any forestry operations which appear to them to be requisite⁷. They may also, with the agreement of the verderers, inclose land forming part of the open waste lands of the forest which are used for certain public facilities⁸. This right is subject to payment for the interference with the rights of commoners⁹. By agreement with the Commissioners, the verderers may take any steps necessary to improve the grazing on the open waste lands of the forest¹⁰. With certain provisos, the highway authority¹¹ may inclose the A337 road between Cadnam and Lymington for the purpose of preventing animals from leaving the forest by that route¹². By agreement between the Secretary of State and the verderers, inclosures may be made for the purpose of cultivation and the improvement of grazing, and the Secretary of State may make payments to the verderers in respect of land so inclosed¹³.

The Forestry Commissioners may, with the approval of the Treasury, make to the verderers of the New Forest such grants as the Commissioners think fit in respect of expenditure incurred or to be incurred by the verderers for the purposes of, or in connection with, the discharge of their functions under the New Forest Acts 1877 to 1970¹⁴.

1 Ie certified by two verderers, one of whom must be the official verderer: New Forest Act 1949 s 4(4); and as to the verderers see note 3. A certified copy must be kept at the office of the verderers and must be available for inspection at all reasonable times on payment of a fee not exceeding 5p: s 4(6) (amended by virtue of the Decimal Currency Act 1969 s 10(1)).

2 New Forest Act 1949 s 4(1), (5). As to rights of common see **COMMONS** vol 13 (2009) PARAS 405, 433 et seq.

3 The verderers of the New Forest consist of the official verderer, five elective verderers and four appointed verderers: see the New Forest Act 1949 s 1. The election of verderers is governed by the New Forest Act 1877, the New Forest Act 1879 and the New Forest Act 1949. These Acts are to be construed together and may be cited as the New Forest Acts 1877 to 1949: New Forest Act 1949 s 23(2).

The verderers may make byelaws relating to domestic animals in the forest: New Forest Act 1877 s 25. Such byelaws have no effect until confirmed by the Secretary of State: New Forest Act 1949 s 9(5). As to the Secretary of State see PARA 2.

4 New Forest Act 1949 s 11.

5 Ie subject to a limit of 2,203 hectares: New Forest Act 1949 s 12(1) proviso (amended by SI 1979/836).

6 New Forest Act 1949 s 12.

- 7 New Forest Act 1949 s 13. No one inclosure made by virtue of this provision may exceed 8 hectares in area: s 13(1) proviso (amended by SI 1979/836). Inclosures made under this power must be laid open as soon as the verderers and the Commissioners determine that to do so will not prejudice the purpose for which the inclosure was made: New Forest Act 1949 s 13(2).
- 8 le those specified in the Countryside Act 1968 s 23(2): see the New Forest Act 1970 s 1(2); and PARA 39.
- 9 New Forest Act 1970 s 1(4).
- 10 New Forest Act 1970 s 3.
- 11 As to highways authorities see **HIGHWAYS, STREETS AND BRIDGES** vol 21 (2004 Reissue) PARA 49 et seq.
- 12 See the New Forest Act 1970 s 2.
- 13 New Forest Act 1949 s 14. The total area of land inclosed under this power must not exceed 1,214 hectares: s 14(1) proviso (amended by SI 1979/836).
- 14 Agriculture and Forestry (Financial Provisions) Act 1991 s 4(1). Such grants are to be made on such terms and conditions as may be determined by the Commissioners and must be defrayed in accordance with the Forestry Act 1967 s 41 (see PARAS 50-51): Agriculture and Forestry (Financial Provisions) Act 1991 s 4(2) (amended by SI 2000/746). Sums received by the verderers by virtue of this provision must be carried to the account of the general fund established by the New Forest Act 1877 and applied accordingly: Agriculture and Forestry (Financial Provisions) Act 1991 s 4(3).

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7. Forest courts.

The ancient forest courts still have a limited jurisdiction. The Court of Swainmote sits for the dispatch of judicial business in the New Forest¹ and can convict for breach of byelaws affecting the forest². The court consists of the official verderer, together with such four of the other verderers as may be nominated by the Lord Chancellor, of whom not fewer than three are to be elective verderers³. The magistrates' court has concurrent jurisdiction with the Court of Swainmote in relation to offences under New Forest byelaws⁴. Failure to pay an annual fee for depasturing animals in the New Forest is a continuing offence under those byelaws⁵.

1 New Forest Act 1949 s 8.

2 See the Forestry Act 1967 ss 46, 47(3); and PARAS 41-42.

3 New Forest Act 1949 s 8(1). As to the verderers see PARA 6 note 3. See also **CROWN PROPERTY** vol 12(1) (Reissue) PARA 227.

4 See *Verderers of the New Forest v Young* [2003] EWHC 3253 (Admin), [2004] 1 EGLR 1, [2003] All ER (D) 308 (Dec), DC (where it was, however, doubted whether the Court of Swainmote was compatible with the fair trial provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969), art 6 (see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 134 et seq)).

5 *Verderers of the New Forest v Young* [2004] EWHC 2954 (Admin), [2004] All ER (D) 14 (Dec), DC.

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8. Common rights.

Woodlands and forests can be subject to common rights where subsisting: the rights chiefly found are those of estovers and pannage, with often a restricted common of pasture in order to preserve the deer¹.

1 As to these rights see **COMMONS** vol 13 (2009) PARAS 409, 411 et seq.

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9. Public access to woodlands and areas of outstanding natural beauty.

For the purpose of enabling the public to have access to open country¹ for recreation a local planning authority² may enter into an access agreement with any person having an interest in the land or make an access order in relation to the land³; woodland may also be designated 'access land' for the purposes of the legislation making provision for public access to the countryside⁴.

Woodlands may also be included in any area designated⁵ as a national park⁶. Although it is not the purpose of the legislation that such designation should affect either the ownership or the management of the land, management may be affected where land is declared to be a nature reserve⁷. Further, any owner, lessee or occupier of woodlands in Wales⁸, or any person with an interest in such land in England⁹, may enter into an agreement providing for the management of the land as a nature reserve¹⁰, and in certain circumstances land may be compulsorily acquired for that purpose¹¹. Certain local authorities may also establish nature reserves¹².

Areas of land outside national parks may be designated as areas of outstanding natural beauty and a conservation board may be established to carry out statutory functions in relation to any such area¹³. The fact that an area in England or Wales consists of or includes land used for woodlands does not prevent it from being treated, for the purposes of any enactment, whenever passed, as being an area of natural beauty or of outstanding natural beauty¹⁴.

1 As to the meaning of 'open country' for these purposes see the National Parks and Access to the Countryside Act 1949 s 59(2); the Countryside Act 1968 ss 16(1), 50(5); and **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 582.

2 As to the local planning authorities generally see **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARAS 28-36.

3 See the National Parks and Access to the Countryside Act 1949 ss 59, 60, 64, 65; and **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 581 et seq.

4 Ie the Countryside and Rights of Way Act 2000: see Pt I Ch I (ss 1-20) (rights of access), Pt I Ch II (ss 21-33) (restrictions on such rights), Pt I Ch III (ss 34-39) (means of access); and **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 580 et seq. As to the meaning of 'access land' and the dedication of access land see in particular ss 1(1), (2), 16(1); and **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 580. The Forestry Act 1967 Sch 2 (power for tenant for life and others to enter into forestry dedication covenants: see PARA 119) applies, subject to specified additional requirements, to dedications of access land as it applies to forestry dedication covenants: see the Countryside and Rights of Way Act 2000 s 16(5), (7), (8); and **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 580.

5 Ie under the National Parks and Access to the Countryside Act 1949 (ss 4A-14) (see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 636 et seq).

6 See the National Parks and Access to the Countryside Act 1949 s 5; and **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 636. See also the New Forest National Park Authority (Establishment) Order 2005, SI 2005/421; and **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 526; **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 32.

7 See **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 663 et seq.

8 See the National Parks and Access to the Countryside Act 1949 s 16(1); and **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 664.

9 See the Natural Environment and Rural Communities Act 2006 s 7(1); and **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 762. As to the meaning of 'interest' in relation to land see the National Parks and Access to the Countryside Act 1949 s 114(1); the Natural Environment and Rural Communities Act 2006 s 7(6); and **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARAS 639, 762.

10 In Wales, an agreement under the National Parks and Access to the Countryside Act 1949 s 16 or in England, a nature reserve agreement under the Natural Environment and Rural Communities Act 2006 s 7.

11 See the National Parks and Access to the Countryside Act 1949 ss 16-18; and **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARAS 664, 668, 671.

12 See the National Parks and Access to the Countryside Act 1949 s 21; and **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 665.

13 See the Countryside and Rights of Way Act 2000 ss 82-93; and **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 658 et seq. As to areas of outstanding natural beauty see further **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 658 et seq.

14 See the Natural Environment and Rural Communities Act 2006 s 99; and **OPEN SPACES AND COUNTRYSIDE**.

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(ii) Planning Legislation

A. TOWN AND COUNTRY PLANNING GENERALLY

10. Use and development of woodlands.

Woodlands, like other land, may be included in regional spatial strategies for England¹, the Wales Spatial Plan², and local development schemes prepared under the provisions of the Planning and Compulsory Purchase Act 2004³. Woodlands may also be subject to a compulsory purchase order for planning purposes under the Town and Country Planning Act 1990⁴. The use of land for the purposes of forestry (including afforestation), and the use of any existing⁵ building occupied together with land so used, is deemed not to involve development for these purposes⁶. Relevant projects are, however, subject to the requirements of the provisions relating to the making of environmental impact assessments⁷. Additionally, where a plan or programme is prepared for forestry which sets the framework for future development consent of certain projects, the responsible authority⁸ must⁹ carry out, or secure the carrying out of, an environmental assessment¹⁰ during the preparation of that plan or programme and before its adoption or submission to the legislative procedure¹¹.

Individual trees, groups of trees and woodlands may be made subject to a tree preservation order¹².

1 As to regional spatial strategies see **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 85A et seq.

2 As to the Wales Spatial Plan see **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARAS 87-88.

3 As to local development planning see **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 89 et seq.

4 Ie under the Town and Country Planning Act 1990 s 226: see **TOWN AND COUNTRY PLANNING** vol 46(2) (Reissue) PARAS 934-935.

5 New buildings constitute 'development' (see the Town and Country Planning Act 1990 s 55(1); and **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARAS 217-218), but buildings and operations used for the purpose of forestry (other than the provision or alteration of dwellings or certain developments near aerodromes or roads) are allowed without planning permission if special conditions (relating to whether or not the prior approval of the local planning authority as to siting, design and external appearance or means of construction is required) are fulfilled: see the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 Pt 7; and **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARAS 310-312.

6 See the Town and Country Planning Act 1990 s 55(2)(e); and **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 223.

7 See the Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228; and PARA 12 et seq.

8 As to the 'responsible authority' for these purposes see **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 60.

9 Ie subject to the Environmental Assessment of Plans and Programmes Regulations 2004, SI 2004/1633, regs 5(5), (6), 7 or, if relating solely to Wales, the Environmental Assessment of Plans and Programmes (Wales) Regulations 2004, SI 2004/1656, regs 5(5), (6), 7: see **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 61.

10 Ie in accordance with the Environmental Assessment of Plans and Programmes Regulations 2004, SI 2004/1633, Pt 3 (regs 12-15) or, if relating solely to Wales, the Environmental Assessment of Plans and

Programmes (Wales) Regulations 2004, SI 2004/1656, Pt 3 (regs 12-15): see **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 65 et seq.

11 See the Environmental Assessment of Plans and Programmes Regulations 2004, SI 2004/1633, reg 5(1)-(3); the Environmental Assessment of Plans and Programmes (Wales) Regulations 2004, SI 2004/1656, reg 5(1)-(3); and **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 61.

12 See PARA 61; and **TOWN AND COUNTRY PLANNING** vol 46(2) (Reissue) PARA 850 et seq.

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B. ENVIRONMENTAL IMPACT ASSESSMENT

(A) INTRODUCTION

11. Requirement for assessments.

Where projects relating to forests are likely to have significant effects upon the environment which would not be considered as part of the normal planning process¹, there are statutory requirements relating to the assessment of the project's environmental impact which must be fulfilled². Unless exempted by direction of the Forestry Commissioners, the Commissioners' consent may be needed³.

1 le by virtue of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293: see **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 488 et seq.

2 See the Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228; and PARA 12 et seq. See also *R (on the application of Tree and Wildlife Action Group) v Forestry Comrs* [2007] EWHC 1623 (Admin) at [24], [2007] 2 P & CR 591, [2007] All ER (D) 383 (Jun) (where a proposal within the Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, includes a proposal for the purposes of conversion to another type of land use the whole project, including the proposed land use, must be taken into account in deciding whether the relevant assessment is required).

3 See PARA 13. As to the Forestry Commissioners see PARA 34 et seq.

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(B) RELEVANT PROJECTS

12. Meaning of 'relevant project' for the purposes of environmental impact assessment.

A project¹ is a 'relevant project'² if:

- 1 (1) it is afforestation³, deforestation⁴, forest road works⁵ or forest quarry works⁶;
- 2 (2) it is likely, by virtue of factors such as its nature, size or location, to have significant effects on the environment⁷; and
- 3 (3) the carrying out of the project either:
 - 1 (a) does not involve development⁸;
 - 2 (b) involves development in England and Wales which is not Schedule 1 development⁹ or other specified development¹⁰ for the purposes of the regulations governing environmental impact assessments in planning generally¹¹; or
 - 3 (c) involves development in England and Wales for which planning permission is granted by the provisions governing the development of forestry land and buildings¹².
- 2

1 'Project' means the execution of construction works or of other installations or schemes or other intervention in the natural surroundings or landscape including those involving the extraction of mineral resources: Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 2(1).

2 le for the purposes of the Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228: see the text and notes 3-12; and PARA 13 et seq.

3 'Afforestation' means initial afforestation for the purposes of conversion to another type of land use: Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 2(1), applying EEC Council Directive 85/337 (OJ L175, 5.7.85, p 40), Annex II para 1(d) (substituted by EC Council Directive 97/11 (OJ L73, 14.3.97, p 5).

4 'Deforestation' means deforestation for the purposes of conversion to another type of land use: Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 2(1), applying EEC Council Directive 85/337 (OJ L175, 5.7.85, p 40), Annex II para 1(d) (as substituted: see note 3). Not only the proposed deforestation, but also the proposed land use, will fall within these provisions if the environmental impact of that proposed land use does not fall to be considered as part of the normal planning process: see *R (on the application of Tree and Wildlife Action Group) v Forestry Comrs* [2007] EWHC 1623 (Admin) at [29]-[33], [2007] 2 P & CR 591, [2007] All ER (D) 383 (Jun).

5 'Forest road works' means the formation, alteration or maintenance of private ways on land used or to be used for the purposes of forestry: Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 2(1).

6 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 3(1)(a), (2). 'Forest quarry works' means operations on land used or to be used for the purposes of forestry, or on land held or occupied with that land, to obtain the materials required for forest road works: reg 2(1).

7 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 3(1)(b). For these purposes, and subject to the provision which is made for exceptional circumstances (ie reg

6(3) (see PARA 15) or reg 7(6) (see PARA 17)), a project is to be taken not to be likely to have significant effects on the environment if the area covered, or to be covered, by the project does not exceed any relevant threshold, ie:

- 4 (1) for afforestation projects or parts of such projects: where any part of the land is in a sensitive area, 2 hectares, where the sensitive area is a national park or area of outstanding natural beauty, but no threshold in the case of other sensitive areas, and, where no part of the land is in a sensitive area, 5 hectares (reg 3(3), Sch 2 para 2(1), (2));
- 5 (2) for deforestation projects or parts of such projects: where any part of the land is in a sensitive area, 0.5 hectare, where the sensitive area is a national park or area of outstanding natural beauty, but no threshold in the case of other sensitive areas, and, where no part of the land is in a sensitive area, 1 hectare (Sch 2 para 2(2)); and
- 6 (3) for forest road works or forest quarry works projects or parts of such projects: no threshold where any part of the land is in a sensitive area and 1 hectare where no part of the land is in a sensitive area (Sch 2 para 2(2)).

For these purposes, by virtue of Sch 2 para 1 (definition amended by virtue of the Countryside and Rights of Way Act 2000 s 76, Sch 10, Sch 15 Pt II; the Natural Environment and Rural Communities Act 2006 Sch 11 para 163), 'sensitive area' means:

- 7 (a) land notified under the Wildlife and Countryside Act 1981 s 28(1) (areas of special scientific interest: see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 674);
- 8 (b) land to which s 29(3) (repealed) (nature conservancy orders) applied (as to nature conservation see now the Natural Environment and Rural Communities Act 2006 Pts 2, 3 (ss 31-54); and **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARAS 525, 757);
- 9 (c) a national park within the meaning of the National Parks and Access to the Countryside Act 1949 (see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 636);
- 10 (d) the Broads;
- 11 (e) a property appearing on the World Heritage List kept under the 1972 UNESCO Convention for the Protection of the World Cultural and Natural Heritage (Paris, 16 November 1972; Cmnd 9424) art 11(2);
- 12 (f) a scheduled monument within the meaning of the Ancient Monuments and Archaeological Areas Act 1979 (see **NATIONAL CULTURAL HERITAGE** vol 77 (2010) PARA 1010);
- 13 (g) an area of outstanding natural beauty designated as such by an order made by Natural England as respects England or the Countryside Council for Wales, as respects Wales, under the Countryside and Rights of Way Act 2000 s 82 (see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 658) and duly confirmed; and
- 14 (h) a European site within the meaning of the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 10 (see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 729).

Where the project under consideration is an 'extending project' the thresholds specified above do not apply and the threshold applicable for that project is instead to be such balance, if any, in hectares, of the area specified in Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, Sch 2 para 2 for that type of project as remains after deduction of the accumulated material past project area: Sch 2 para 3(1). It is immaterial for these purposes whether any part of the accumulated material past project area is, or is not, in a sensitive area or any kind of sensitive area: Sch 2 para 3(2). The fact that a project is or would be adjoining or, in the opinion of the Forestry Commissioners or (as the case may be) the Secretary of State or the Welsh Ministers (as to which see PARA 2), near another project of any type specified in reg 3(2), and the fact that, for any reason, the case in question does not fall within Sch 2 para 3, may be regarded by the Commissioners or authority as rendering the circumstances of that project exceptional for the purposes of reg 6(3) (see PARA 15) or (as the case may be) reg 7(6) (see PARA 17); but this does not affect the application of those provisions in a case which does fall within Sch 2 para 3, and is not to be interpreted as limiting the generality of the references in those regulations to circumstances which are, in the opinion of the Commissioners or (as the case may be) the Secretary of State or the Welsh Ministers, exceptional: Sch 2 para 4. For these purposes 'extending project' means any project covering, or proposed to cover, land adjoining the area of one or more material past projects; 'material past project', in relation to a particular extending project, means a project which is of the same type (as specified in reg 3(2)) as that extending project, which was completed after 6 September 1999 (ie the date on which the Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, were brought into force by virtue of reg 1(1)), and which was completed not more than five years before the proposed date for starting the work relating to that

extending project; and 'accumulated material past project area', in relation to a particular extending project, means the total area covered by the material past project or, if more than one, all of them, and every other project whose area adjoins the material past project, or one of them; and which satisfies the applicable conditions for an extending project set out above: Sch 2 para 3(3).

8 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 3(1)(c)(i). 'Development' means development within the meaning of the Town and Country Planning Act 1990 s 55 (see **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 217 et seq): Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 2(1).

9 ie is not development mentioned in the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, Sch 1 (see **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 489): Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 3(1)(c)(ii).

10 ie development mentioned in the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, Sch 2, Table col 1 (see **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 490): Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 3(1)(c)(ii).

11 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 3(1)(c)(ii). The regulations governing environmental impact assessments in planning generally are the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, Sch 2, Table col 1 (see **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 487 et seq).

12 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 3(1)(c)(iii). The provisions governing the development of forestry land and buildings are the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 Pt 7: see **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARAS 310-312.

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13. Restriction on relevant projects.

No person is to carry out, on any land, work or operations relating to a relevant project¹ unless:

- 4 (1) consent² has been granted for that project by the Forestry Commissioners³ or by the Secretary of State or the Welsh Ministers⁴; and
- 5 (2) the project is carried out in accordance with the consent, including the conditions to which the consent is subject⁵,

but the Commissioners may⁶ direct that a particular project is exempted from the application of these requirements⁷. Such a direction must be in writing and must be accompanied by a statement of the Commissioners' reasons for making it⁸ and no such direction may be made where it appears to the Commissioners that the project would be likely to have significant effects on the environment in another EEA state⁹. Where such a direction is made the Commissioners must:

- 6 (a) consider whether another form of assessment would be appropriate¹⁰; and
- 7 (b) where they do, take such steps as they consider appropriate to bring the information obtained under it to the attention of the public concerned¹¹.

1 As to the meaning of 'relevant project' see PARA 12; as to the meaning of 'project' see PARA 12 note 1.

2 Any reference in the Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, other than reg 22 (see PARA 32) to 'consent' is a reference to the consent of the Forestry Commissioners required by reg 4 (see the text and notes 3-10); and: (1) where the context permits, includes consent by the Secretary of State or the Welsh Ministers on an appeal under reg 17 (see PARA 27); and (2) in reg 4 and in regs 20-23 (see PARAS 30-33) includes (in accordance with reg 25(9) (transitional provisions)) consent granted under the Environmental Assessment (Forestry) Regulations 1998, SI 1998/1731 (revoked): Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 2(3). As to the Secretary of State and the Welsh Ministers (referred to in these provisions as the 'appropriate authority') see PARA 2. See also PARA 56 (requirement for licences for planting trees in certain areas) and PARA 120 (felling licences).

3 As to the Forestry Commissioners see PARA 34 et seq.

4 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 4(1)(a).

5 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 4(1)(b). It is specifically provided that a farmer is not to carry out, on any land, work or operations relating to a relevant project unless consent has been granted for that project by the Commissioners or by the Secretary of State or the Welsh Ministers and the project is carried out in accordance with the consent (including any conditions to which the consent is subject): Common Agricultural Policy Single Payment and Support Schemes (Cross-compliance) (England) Regulations 2005, SI 2005/3459, Schedule para 16(1), (4); Common Agricultural Policy Single Payment and Support Schemes (Cross Compliance) (Wales) Regulations 2004, SI 2004/3280, Schedule para 15(1), (4). As to the meaning of 'farmer' for these purposes see **AGRICULTURAL PRODUCTION AND MARKETING** vol 1 (2008) PARA 754; and as to the making of environmental impact assessments in connection with the restructuring of agricultural holdings and the use of uncultivated land see **AGRICULTURAL LAND** vol 1 (2008) PARA 638 et seq.

6 ie in accordance with EEC Council Directive 85/337 (OJ L175, 5.7.85, p 40) art 2(3).

7 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 4(2). 'These requirements' are the requirements of the Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228 (see PARAS 12, 14 et seq). At each of their Conservancy offices in England and Wales, the Commissioners must keep a register, so far as relating to the area of that Conservancy, of each direction received under reg 4(2) and any accompanying statement of reasons: reg 24(1)(a), (h). Each register so kept must be available for inspection by the public at all reasonable hours: reg 24(2). As to the meaning of 'conservancy' for the purposes of the Forestry Act 1967 Pt II (ss 9-36) see s 35; and PARA 36 note 5.

8 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 4(3).

9 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 4(4). 'EEA state' means a state which is a contracting party to the Agreement on the European Economic Area signed at Oporto on 2 May 1992 as adjusted by the Protocol signed in Brussels on 17 March 1993: Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 2(1).

10 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 4(5)(a) (reg 4(5) added by SI 2006/3106).

11 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 4(5)(b) (as added: see note 10).

UPDATE

13 Restriction on relevant projects

NOTE 5--SI 2005/3459 replaced: Agriculture (Cross compliance) Regulations 2009, SI 2009/3264.

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14. Application for an opinion whether a project is a relevant project.

The proposer¹ may apply in writing to the Forestry Commissioners² for their opinion whether a project is a relevant project³. An application so made must include or be accompanied by:

- 8 (1) a map or plan sufficient to identify the land that is the subject of the proposed project and the extent of the proposed project⁴;
- 9 (2) a brief description of the nature of the proposed project and of its possible effects on the environment⁵; and
- 10 (3) such further information or representations as the proposer may wish to provide or make⁶.

If they consider that they have not been provided with sufficient information to enable them to give an opinion whether a project is a relevant project⁷, the Commissioners must notify the proposer in writing of the matters on which they require further information; and the proposer must supply that further information to the Commissioners within such period as the Commissioners reasonably may require or such other period as may be agreed in writing between the Commissioners and the proposer⁸.

1 'Proposer' means person who proposes to carry out a project: Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 2(1). As to the meaning of 'project' see PARA 12 note 1.

2 As to the Forestry Commissioners see PARA 34 et seq.

3 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 5(1). As to the meaning of 'relevant project' see PARA 12.

4 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 5(2)(a).

5 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 5(2)(b).

6 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 5(2)(c).

7 I.e. their opinion under the Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 5(1): see the text and notes 1-3.

8 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 5(3).

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15. Opinions of the Commissioners.

Where the proposer¹ applies to the Forestry Commissioners² for their opinion as to whether a project³ is a relevant project⁴, they must give to the proposer written notice of their opinion within:

- 11 (1) 28 days beginning with the date of their receipt of the application or, where they notify the proposer⁵ that they require further information, the date of their receipt of that information⁶; or
- 12 (2) such longer period as may be agreed in writing between the Commissioners and the proposer⁷.

In considering, for the purpose of forming their opinion, whether the project is likely to have significant effects on the environment, the Commissioners must take into account:

- 13 (a) a consideration of the characteristics of the project⁸;
- 14 (b) a consideration of the environmental sensitivity of geographical areas likely to be affected⁹; and
- 15 (c) a consideration of the potential significant effects of projects in relation to criteria set out under heads (a) and (b) above¹⁰.

In a case where the project does not exceed any relevant threshold¹¹, the Commissioners must form their opinion in accordance with the statutory assumption that the project is to be taken not to be likely to have significant effects on the environment¹² except where, in their opinion, there are exceptional circumstances¹³ which, taking account of the selection criteria set out above, make it likely that the project will have significant effects on the environment¹⁴.

Where the opinion of the Commissioners is that the project is a relevant project, the Commissioners must include in or provide with their opinion a written statement of their reasons for being of that opinion¹⁵.

The Commissioners may also of their own motion give their opinion whether or not a project is or would be a relevant project¹⁶. Where they so give an opinion they must give written notice of their opinion to any person who reasonably appears to them to be the proposer¹⁷.

1 As to the meaning of 'proposer' see PARA 14 note 1.

2 As to the Forestry Commissioners see PARA 34 et seq.

3 As to the meaning of 'project' see PARA 12 note 1.

4 It applies under the Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 5: see PARA 14. As to the meaning of 'relevant project' see PARA 12. At each of their Conservancy offices in England and Wales, the Commissioners must keep a register, so far as relating to the area of that Conservancy, of each opinion under reg 6(1) and any accompanying statement of reasons: reg 24(1)(b), (h). Each register so kept must be available for inspection by the public at all reasonable hours: reg 24(2). As to the meaning of 'conservancy' for the purposes of the Forestry Act 1967 Pt II (ss 9-36) see s 35; and PARA 36 note 5.

5 le under the Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 5(3): see PARA 14.

6 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 6(1)(a).

7 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 6(1)(b).

8 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 6(2), Sch 3 para 1. Particular regard must be had to the size of the project, the cumulation with other projects, the use of natural resources, the production of waste, pollution and nuisances, and the risk of accidents, having regard in particular to substances or technologies used: Sch 3 para 1. See *R (on the application of Tree and Wildlife Action Group) v Forestry Comrs* [2007] EWHC 1623 (Admin), (2007) Times, 17 July, [2007] All ER (D) 383 (Jun) (the Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, Sch 3 para 1 covers not only the situation where a number of applications are made in respect of small areas of forest instead of a single application for the total area, but also the situation where projects are part of the same proposal, and where a proposal within the Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, includes a proposal for the purposes of conversion to another type of land use the whole project, including the proposed land use, must be taken into account in deciding whether the relevant assessment is required).

9 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, Sch 3 para 2. Particular regard must be had to:

15 (1) the existing land use (Sch 3 para 2);

16 (2) the relative abundance, quality and regenerative capacity of natural resources in the area (Sch 3 para 2); and

17 (3) the absorption capacity of the natural environment, paying particular attention to: wetlands; coastal zones; mountain and forest areas; nature reserves and parks; areas classified or protected under member states' legislation; special protection areas designated by member states pursuant to EEC Council Directive 79/409 (OJ L103, 25.4.79, p 1) on the conservation of wild birds and EEC Council Directive 92/43 (OJ L206, 22.7.92, p 7) on the conservation of natural habitats and wild fauna; areas in which the environmental quality standards laid down in Community legislation have already been exceeded; densely populated areas; and landscapes of historical, cultural or archaeological significance (Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, Sch 3 para 2).

10 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, Sch 3 para 3. Particular regard must be had to the extent of the impact (geographical area and size of the affected population), the transfrontier nature of the impact, the magnitude and complexity of the impact, the probability of the impact, and the duration, frequency and reversibility of the impact: Sch 3 para 3.

11 le any relevant threshold set out in the Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, Sch 2: see PARA 12.

12 le in accordance with the Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 3(3): see PARA 12.

13 For this purpose, the reference to circumstances which are, in the opinion of the Commissioners, exceptional is to be construed in accordance with the Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, Sch 2 para 4 (see PARA 12): reg 6(6).

14 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 6(3).

15 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 6(4).

16 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 6(5). At each of their Conservancy offices in England and Wales, the Commissioners must keep a register, so far as relating to the area of that Conservancy, of each opinion under reg 6(1) and any accompanying statement of reasons: reg 24(1)(b), (h). Each register so kept must be available for inspection by the public at all reasonable hours: reg 24(2).

17 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 6(5)(a). Where they so give an opinion, reg 6(2)-(4) (see the text and notes 8, 11-15) applies as it does to an opinion given in relation to an application under reg 5(1): reg 6(5)(b).

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16. Application for directions by Secretary of State or Welsh Ministers.

The proposer¹ may apply in writing to the Secretary of State or the Welsh Ministers² for a direction whether a project³ is a relevant project⁴ where:

- 16 (1) the Forestry Commissioners⁵ give notice of their opinion⁶ that the project is or would be a relevant project⁷; or
- 17 (2) the Commissioners fail to give notice of their opinion within the required period⁸ of time⁹.

An application so made must be accompanied by, or by copies of:

- 18 (a) any application by the proposer to the Commissioners¹⁰ and any documents supplied to the Commissioners by the proposer in connection with that application¹¹; and
- 19 (b) in a case falling within head (1) above, the opinion of the Commissioners and any written statement of reasons which they provided with it¹²,

and may include such further information or representations as the proposer may wish to provide or make¹³. Where the Secretary of State considers or the Welsh Ministers consider that the documents so supplied do not provide sufficient information to enable a direction to be given, he or they:

- 20 (i) must notify the proposer in writing of the matters on which further information is required¹⁴; and
- 21 (ii) may seek further information on those matters from the Commissioners and the Commissioners must supply that further information to the Secretary of State considers or the Welsh Ministers if it is in their possession¹⁵.

1 As to the meaning of 'proposer' see PARA 14 note 1.

2 As to the Secretary of State and the Welsh Ministers (referred to in these provisions as the 'appropriate authority') see PARA 2.

3 As to the meaning of 'project' see PARA 12 note 1.

4 As to the meaning of 'relevant project' see PARA 12. As to the giving of directions by the Secretary of State and the Welsh Ministers see PARA 17.

5 As to the Forestry Commissioners see PARA 34 et seq.

6 I.e. under the Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 6(1) or reg 6(5): see PARA 15.

7 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 7(1)(a).

8 I.e. the period of time required by the Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 6(1): see PARA 15.

9 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 7(1)(b).

10 le under the Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 5(1): see PARA 14.

11 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 7(2)(a).

12 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 7(2)(b).

13 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 7(2).

14 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 7(3)(a).

15 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 7(3)(b).

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17. Giving of directions by Secretary of State or Welsh Ministers.

The Secretary of State and the Welsh Ministers¹ must give a direction whether a project² is a relevant project³ within 28 days, or such longer period as he or they may reasonably require, beginning with the date of receipt of the application⁴ or, where the Secretary of State has or the Welsh Ministers have required or sought further information⁵, the date of receipt of that information⁶. In considering, for the purpose of deciding on a direction, whether the project is likely to have significant effects on the environment, the Secretary of State and the Welsh Ministers must take into account the prescribed selection criteria⁷. In a case, however, where the project does not exceed any relevant threshold⁸, the Secretary of State and the Welsh Ministers must make his or their decision in accordance with the statutory assumption that the project is to be taken not to be likely to have significant effects on the environment⁹ except where, in his or their opinion, there are exceptional circumstances¹⁰ which, taking account of the selection criteria, make it likely that the project will have significant effects on the environment¹¹.

The Secretary of State and the Welsh Ministers must provide the proposer¹² and the Forestry Commissioners¹³ with a written statement of the direction including, where the direction is that the project is or would be a relevant project, the reasons for this direction¹⁴.

The Secretary of State and the Welsh Ministers may also of his or their own motion give a direction whether or not a project is or would be a relevant project¹⁵. Where a direction is so given, a written statement of the direction must be provided to the Commissioners and to any person who reasonably appears to the Secretary of State or the Welsh Ministers to be the proposer¹⁶.

1 As to the Secretary of State and the Welsh Ministers (referred to in these provisions as the 'appropriate authority') see PARA 2.

2 As to the meaning of 'project' see PARA 12 note 1.

3 As to the meaning of 'relevant project' see PARA 12.

4 I.e. the application under the Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 7(1): see PARA 16.

5 I.e. under the Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 7(3): see PARA 16.

6 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 7(4).

7 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 7(5). The selection criteria referred to in the text are the selection criteria in Sch 3: see PARA 15.

8 I.e. any relevant threshold set out in the Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, Sch 2: see PARA 12.

9 I.e. in accordance with the Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 3(3): see PARA 12.

10 For this purpose, the reference to circumstances which are, in the opinion of the Secretary of State or the Welsh Ministers, exceptional is to be construed in accordance with the Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, Sch 2 para 4 (see PARA 12): reg 7(9).

11 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 7(6).

12 As to the meaning of 'proposer' see PARA 14 note 1.

13 As to the Forestry Commissioners see PARA 34 et seq.

14 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 7(7). At each of their Conservancy offices in England and Wales, the Commissioners must keep a register, so far as relating to the area of that Conservancy, of each direction received under reg 7(7) and any accompanying statement of reasons: reg 24(1)(c), (h) (reg 24(1)(c) amended by SI 2006/3106). Each register so kept must be available for inspection by the public at all reasonable hours: Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 24(2). As to the meaning of 'conservancy' for the purposes of the Forestry Act 1967 Pt II (ss 9-36) see s 35; and PARA 36 note 5.

15 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 7(8).

16 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 7(8)(a). Regulation 7(5)-(7) (see the text and notes 7-14) apply as they apply to a direction given in relation to an application under reg 7(1) (see PARA 16): reg 7(8)(b). At each of their Conservancy offices in England and Wales, the Commissioners must keep a register, so far as relating to the area of that Conservancy, of each direction received under reg 7(8)(a) and any accompanying statement of reasons: reg 24(1)(c), (h) (reg 24(1)(c) amended by SI 2006/3106). Each register so kept must be available for inspection by the public at all reasonable hours: reg 24(2).

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18. Effect of directions and opinions.

A direction given by the Secretary of State or the Welsh Ministers¹ that a project² is not or would not be a relevant project³ or, in the absence of such a direction, an opinion given by the Forestry Commissioners⁴ to that effect has the effect of determining for these purposes⁵ that the project specified in the direction or opinion, but only that project, is not or would not be a relevant project⁶. Such a direction or opinion ceases, however, to have effect, without prejudice to the availability of a further direction or opinion, on the expiry of:

- 22 (1) the period of five years beginning with the date on which the direction or opinion is given⁷; or
- 23 (2) such shorter period as may be specified in the direction or opinion⁸,

if the work relating to the project has not been completed within that period⁹.

A direction given by the Secretary of State or the Welsh Ministers¹⁰ that a project is or would be a relevant project or, in the absence of such a direction, an opinion given by the Commissioners¹¹ to that effect has the effect of determining for these purposes¹² that the project specified in the direction or opinion is or would be a relevant project¹³.

1 Ie a direction given under the Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 7: see PARAS 16, 17. As to the Secretary of State and the Welsh Ministers (referred to in these provisions as the 'appropriate authority') see PARA 2.

2 As to the meaning of 'project' see PARA 12 note 1.

3 As to the meaning of 'relevant project' see PARA 12.

4 Ie an opinion given under the Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 6: see PARA 15. As to the Forestry Commissioners see PARA 34 et seq.

5 Ie for the purposes of the Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228: see PARAS 12 et seq, 19 et seq.

6 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 8(1), (2)(a).

7 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 8(2)(b)(i).

8 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 8(2)(b)(ii).

9 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 8(2)(b).

10 See note 1.

11 See note 4.

12 See note 5.

13 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 8(3), (4).

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(C) ENVIRONMENTAL STATEMENTS AND APPLICATIONS FOR CONSENT

19. Environmental statements.

Before consent to a relevant project¹ is given, it is necessary for the proposer² to prepare an environmental statement in respect of the relevant project³. An environmental statement is a statement:

- 24 (1) which includes such of the following information as is reasonably required to assess the environmental effects of the project⁴ and which the applicant can, having regard in particular to current knowledge and methods of assessment, reasonably be required to compile:
 - 3
 4. (a) a description of the project⁵;
 5. (b) an outline of the main alternatives studied by the applicant and an indication of the main reasons for his choice, taking into account the environmental effects⁶;
 6. (c) a description of the aspects of the environment likely to be significantly affected by the proposed project⁷;
 7. (d) a description of the likely significant effects of the proposed project on the environment⁸;
 8. (e) a description of the measures envisaged to prevent, reduce and, where possible, offset any significant adverse effects on the environment⁹;
 9. (f) a non-technical summary of the information provided under heads (a) to (e) above¹⁰; and
 10. (g) an indication of any difficulties (technical deficiencies or lack of know-how) encountered by the applicant in compiling the required information¹¹; and
 - 4
- 25 (2) that includes at least the following information:
 - 5
 11. (a) a description of the project comprising information on the site, design and size of the project¹²;
 12. (b) a description of the measures envisaged in order to avoid, reduce and, if possible, remedy significant adverse effects¹³;
 13. (c) the data required to identify and assess the main effects which the project is likely to have on the environment¹⁴;
 14. (d) an outline of the main alternatives studied by the applicant and an indication of the main reasons for his choice, taking into account the environmental effects¹⁵; and
 15. (e) a non-technical summary of the information provided under heads (a) to (d) above¹⁶.
 - 6

1 As to the meaning of 'relevant project' see PARA 12.

2 As to the meaning of 'proposer' see PARA 14 note 1.

3 See PARA 20 et seq.

4 As to the meaning of 'project' see PARA 12 note 1.

5 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 2(1), Sch 1 Pt I para 1. The description must include in particular a description of the physical characteristics of the whole project and the land-use requirements during the construction and operational phases, a description of the main characteristics of the production processes, for instance, nature and quantity of the materials used, and an estimate, by type and quantity, of expected residues and emissions (water, air and soil pollution, noise, vibration, light, heat, radiation, etc) resulting from the operation of the proposed project: Sch 1 Pt I para 1.

6 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, Sch 1 Pt I para 2.

7 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, Sch 1 Pt I para 3. Such description must include, in particular, population, fauna, flora, soil, water, air, climatic factors, material assets including the architectural and archaeological heritage, landscape and the interrelationship between the above factors: Sch 1 Pt I para 3.

8 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, Sch 1 Pt I para 4. Such description should cover the direct effects and any indirect, secondary, cumulative, short, medium and long-term, permanent and temporary, positive and negative effects of the project, resulting from the existence of the project, the use of natural resources, and the emission of pollutants, the creation of nuisances and the elimination of waste, and should also cover the description by the applicant of the forecasting methods used to assess the effects on the environment: Sch 1 Pt I para 4.

9 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, Sch 1 Pt I para 5.

10 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, Sch 1 Pt I para 6.

11 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, Sch 1 Pt I para 7.

12 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, Sch 1 Pt II para 1.

13 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, Sch 1 Pt II para 2.

14 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, Sch 1 Pt II para 3.

15 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, Sch 1 Pt II para 4.

16 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, Sch 1 Pt II para 5.

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20. Request as to the information to be included in an environmental statement.

Before applying for consent¹ to carry out work in relation to a project², a proposer³ may request the Forestry Commissioners⁴ to give their opinion as to the information to be contained in the environmental statement⁵ required for that project⁶. Where a proposer requests such an opinion before a determination has been made whether the project is or would be a relevant project⁷, the Commissioners must deal with the request on the assumption that the project is a relevant project⁸. Before giving such an opinion, the Commissioners must consult the proposer, the countryside bodies⁹ and any relevant local authority¹⁰.

The Commissioners must, within a period of five weeks beginning with the date of the receipt of the request or such longer period as may be agreed in writing with the proposer, give their opinion¹¹ and must send a copy to the proposer¹².

Where the Commissioners fail to give their opinion within the relevant period, the proposer may request the Secretary of State or the Welsh Ministers¹³ to make a direction as to the information to be contained in the environmental statement required for the project¹⁴. Before making such a direction, the Secretary of State and the Welsh Ministers must consult the proposer, the countryside bodies and any relevant local authority¹⁵.

The Secretary of State and the Welsh Ministers must, within a period of five weeks beginning with the date of the receipt of the request or such longer period as may be required for the purpose, make a direction¹⁶ and must send a copy to the proposer and to the Commissioners¹⁷.

1 As to references to 'consent' see PARA 13 note 2.

2 As to the meaning of 'project' see PARA 12 note 1.

3 As to the meaning of 'proposer' see PARA 14 note 1.

4 As to the Forestry Commissioners see PARA 34 et seq.

5 As to the environmental statement see PARA 19.

6 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 9(1). At each of their Conservancy offices in England and Wales, the Commissioners must keep a register, so far as relating to the area of that Conservancy, of each opinion under reg 9(1) and any accompanying statement of reasons: reg 24(1)(d), (h). Each register so kept must be available for inspection by the public at all reasonable hours: reg 24(2). As to the meaning of 'conservancy' for the purposes of the Forestry Act 1967 Pt II (ss 9-36) see s 35; and PARA 36 note 5.

7 As to the meaning of 'relevant project' see PARA 12.

8 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 9(2).

9 'Countryside bodies' means: (1) where the land is situated in England, the Countryside Agency and English Nature; (2) where the land is situated in Wales, the Countryside Council for Wales; and (3) where the land is situated in England or Wales, the Environment Agency and any other body designated by statutory provision as having specific environmental responsibilities: Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 2(1) (definition amended by SI 2006/3106). As to the Countryside Agency, English Nature and the Countryside Council for Wales see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARAS 523-524. As to the Environment Agency see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 68 et seq.

10 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 9(3). 'Relevant local authority' means a local authority for the area in which it is proposed to carry out the project which appears to the Commissioners or, as the case may be, the appropriate authority to have an interest in the issue of what information the environmental statement should contain: reg 9(8).

11 le under the Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 9(1): see the text and notes 1-6.

12 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 9(4).

13 As to the Secretary of State and the Welsh Ministers (referred to in these provisions as the 'appropriate authority') see PARA 2.

14 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 9(5).

15 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 9(6).

16 le under the Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 9(5): see the text and notes 13-14.

17 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 9(7). At each of their Conservancy offices in England and Wales, the Commissioners must keep a register, so far as relating to the area of that Conservancy, of each direction received under reg 9(7) and any accompanying statement of reasons: reg 24(1)(e), (h). Each register so kept must be available for inspection by the public at all reasonable hours: reg 24(2). As to the meaning of 'conservancy' for the purposes of the Forestry Act 1967 Pt II (ss 9-36) see s 35; and PARA 36 note 5.

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21. Provision of further information.

An application for consent¹ must be made in writing to the Forestry Commissioners² and must be accompanied by:

- 26 (1) a map or plan sufficient to identify the land on which the relevant project³ would be carried out and the extent of any planting, regeneration, construction, works or operations⁴;
- 27 (2) a description of the nature of the relevant project⁵;
- 28 (3) an environmental statement⁶ in respect of the relevant project⁷; and
- 29 (4) a copy of the notice⁸ to be published⁹.

An applicant for consent must supply to the Commissioners such number of copies of the application and the documents accompanying it as the Commissioners reasonably may require¹⁰.

Where in the opinion of the Commissioners:

- 30 (a) further information is reasonably required for their proper consideration of the likely environmental effects of the relevant project to which an application for consent relates¹¹; and
- 31 (b) the applicant could, having regard in particular to current knowledge and methods of assessment, provide such information¹²,

the Commissioners must notify the applicant in writing of the matter on which they require further information and the applicant must provide that further information¹³.

1 As to references to 'consent' see PARA 13 note 2.

2 As to the Forestry Commissioners see PARA 34 et seq.

3 As to the meaning of 'relevant project' see PARA 12.

4 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 10(1)(a).

5 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 10(1)(b).

6 As to the meaning of 'environmental statement' see PARA 19. As to assistance with preparing the statement see PARA 22.

7 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 10(1)(c). At each of their Conservancy offices in England and Wales, the Commissioners must keep a register, so far as relating to the area of that Conservancy, of each environmental statement received, including any further information: reg 24(1)(i). Each register so kept must be available for inspection by the public at all reasonable hours: reg 24(2). As to the meaning of 'conservancy' for the purposes of the Forestry Act 1967 Pt II (ss 9-36) see s 35; and PARA 36 note 5.

8 le the notice to be published in accordance with the Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 13(1): see PARA 23.

9 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 10(1)(d).

10 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 10(2).

11 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 11(a).

12 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 11(b).

13 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 11.

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22. Assistance in preparation of environmental statements.

The Forestry Commissioners¹, each of the countryside bodies² or any local authority for the area in which it is proposed to carry out the project³ must, if requested by an applicant for consent⁴, and may without such a request, enter into consultation with an applicant for consent to determine whether the Commissioners, the countryside body or the local authority have in their possession any information which may be relevant to the preparation of the environmental statement⁵ and if the Commissioners, the countryside body or local authority have such information, they must make it available to the applicant⁶. This does not, however:

- 32 (1) require the Commissioners, countryside bodies or local authorities to disclose information which they may refuse to disclose⁷ or are prevented⁸ from disclosing⁹; or
- 33 (2) prevent the Commissioners or a countryside body imposing a charge reflecting the cost of making the information available, including for the identification, preparation and copying of any information, or making the payment of such a charge a condition of providing the information¹⁰.

1 As to the Forestry Commissioners see PARA 34 et seq.

2 As to the 'countryside bodies' see PARA 20 note 9.

3 As to the meaning of 'project' see PARA 12 note 1.

4 As to references to 'consent' see PARA 13 note 2.

5 As to the meaning of 'environmental statement' see PARA 19.

6 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 12(1).

7 Ie under the Environmental Information Regulations 2004, SI 2004/3391, reg 12(1) (exceptions to the duty to disclose environmental information) (see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 55; **WATER AND WATERWAYS** vol 101 (2009) PARA 681).

8 Ie under the Environmental Information Regulations 2004, SI 2004/3391, reg 13(1) (restrictions on disclosure of personal data) (see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 55; **WATER AND WATERWAYS** vol 101 (2009) PARA 681).

9 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 12(2) (substituted by SI 2006/3106).

10 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 12(3).

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23. Publicity.

A person who makes an application for consent¹ or who provides further information in relation to that application² must publish a notice in such newspapers, not being less than two, as the Forestry Commissioners³ reasonably may require for the purposes of ensuring:

- 34 (1) the application for consent or, as the case may be, the further information, is made available to the public⁴; and
- 35 (2) the public concerned is given an opportunity to express an opinion before the application for consent is determined⁵.

A notice so required must:

- 36 (a) state that the application has been made or, as the case may be, that the further information has been furnished to the Commissioners⁶;
- 37 (b) specify an office of the Commissioners or other place nominated by them at which copies of the application or the further information may be inspected free of charge at all reasonable hours within 28 days beginning with the date of publication of the notice⁷;
- 38 (c) specify an address at which copies of the application or the further information may be obtained from the applicant and if a charge is to be made for a copy, the amount, not exceeding a reasonable charge for copying, of the charge⁸;
- 39 (d) state that any person wishing to make representations regarding the application or the further information should make them in writing to the Commissioners, at an address nominated by them and specified in the notice, within 28 days beginning with the date of publication of the notice⁹; and
- 40 (e) state, in relation to an application, that the Commissioners may decide either:

7

- 16. (i) to grant consent either subject only to the prescribed conditions¹⁰ or also subject to such further conditions as they see fit¹¹; or

- 17. (ii) to refuse consent¹².

8

On receipt of an application for consent¹³ or of further information, the Commissioners must provide copies of the application or, as the case may be, the further information, together with a notice stating that any representations regarding the application or the further information should be made in writing to the Commissioners within 28 days beginning with the date of the notice, to the countryside bodies¹⁴, and to any local authority or other public authority which appears to the Commissioners to have an interest in the application¹⁵.

1 Ie under the Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 10: see PARA 21. As to references to 'consent' see PARA 13 note 2.

2 Ie whether under the Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 11 (see PARA 21) or otherwise: reg 13(1) (reg 13(1), (3) amended, reg 13(2)(c), (d),

substituted, reg 13(2)(e) added, by SI 2006/3106). In reg 13, reference to an 'application' includes a reference to the documents accompanying that application: reg 13(4).

3 As to the Forestry Commissioners see PARA 34 et seq.

4 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 13(1)(a) (as amended: see note 2).

5 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 13(1)(b).

6 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 13(2)(a).

7 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 13(2)(b).

8 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 13(2)(c) (as substituted: see note 2).

9 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 13(2)(d) (as substituted: see note 2).

10 I.e. the conditions required by the Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 18: see PARA 25.

11 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 13(2)(e)(i) (as added: see note 2).

12 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 13(2)(e)(ii) (as added: see note 2).

13 See note 1.

14 As to the 'countryside bodies' see PARA 20 note 9.

15 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 13(3) (as amended: see note 2).

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24. Information for another EEA state.

Where it appears to the Forestry Commissioners¹ that a project² in relation to which they have received an application for consent³ would be likely to have significant effects on the environment of another EEA state⁴ or where another EEA state likely to be significantly affected so requests, the Commissioners must provide a copy of the environmental statement⁵ relating to the project to the Secretary of State or the Welsh Ministers⁶.

Where it appears to the Secretary of State or the Welsh Ministers that a project would be likely to have significant effects on the environment of another EEA state or where another EEA state likely to be significantly affected so requests, he or they must:

- 41 (1) send to the EEA state as soon as possible, and no later than the date of its publication as required by head (2) below:
- 9
18. (a) a description of the project, together with any available information on its possible significant effects on the environment in another EEA state⁷; and
19. (b) information on the nature of the decision which may be taken⁸;
- 10
- 42 (2) publish the information referred to in head (1) above in a notice placed in the London Gazette with an indication of where further information is available⁹; and
- 43 (3) inform the applicant for consent¹⁰.

The Secretary of State and the Welsh Ministers must also give the EEA state a reasonable time in which to indicate whether it wishes to participate in this procedure¹¹, and where the EEA state indicates that it wishes to participate in the procedure the Secretary of State or the Welsh Ministers must, if he or they think fit, as soon as possible send to that EEA state:

- 44 (i) a copy of the application for consent¹²;
- 45 (ii) a copy of the environmental statement¹³; and
- 46 (iii) relevant information regarding the procedure¹⁴, but only to the extent that such information has not been provided to the EEA state earlier in accordance with heads (1) to (3) above¹⁵.

If the Secretary of State sends or the Welsh Ministers send such information to the EEA state he or they must also publish the information in a notice placed in the London Gazette with an indication of where further information is available¹⁶ and inform the applicant for consent¹⁷.

The Secretary of State and the Welsh Ministers, in so far as concerned, must also arrange for the information referred to in heads (a) and (b) and heads (i) to (iii) above and any further information provided by the applicant in relation to the application for consent to be made available, within a reasonable time, to the designated authorities to be consulted¹⁸ and the public concerned in the territory of the EEA state likely to be significantly affected¹⁹. It must ensure that those authorities and the public concerned are given an opportunity, before the determination of the application for consent, to forward to the Secretary of State or the Welsh Ministers, within a reasonable time, their opinion on the information so supplied²⁰.

The Secretary of State and the Welsh Ministers must²¹ enter into consultations with the EEA state concerned regarding, inter alia, the potential significant effects of the project on the environment of that EEA state and the measures envisaged to reduce or eliminate such effects²², and must determine in agreement with the other EEA state a reasonable period of time for the duration of the consultation period²³. Where an EEA state has been consulted in accordance with that requirement, on the determination of the application concerned the Secretary of State or the Welsh Ministers must inform the EEA state of the decision and must forward to it a statement of the content of the decision and any conditions attached thereto²⁴, the main reasons and considerations on which the decision is based²⁵, and a description, where necessary, of the main measures to avoid, reduce and, if possible, offset the major adverse effects of the project²⁶.

1 As to the Forestry Commissioners see PARA 34 et seq.

2 As to the meaning of 'project' see PARA 12 note 2.

3 As to references to 'consent' see PARA 13 note 2.

4 As to the meaning of 'EEA state' see PARA 13 note 9.

5 As to the meaning of 'environmental statement' see PARA 19.

6 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 14(1). As to the Secretary of State and the Welsh Ministers (referred to in these provisions as the 'appropriate authority') see PARA 2.

7 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 14(2)(a), (3)(a).

8 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 14(3)(b).

9 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 14(2)(b).

10 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 14(2)(d).

11 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 14(2)(c). The procedure in question is that for which the Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228 (see PARAS 12 et seq, 25 et seq) provides.

12 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 14(2)(a), (4)(a).

13 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 14(4)(b).

14 I.e the procedure under the Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228 (see PARAS 12 et seq, 25 et seq).

15 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 14(4)(c).

16 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 14(2)(b).

17 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 14(2)(d).

18 I.e the authorities referred to in EEC Council Directive 92/43 (OJ L206, 22.7.92, p 7) on the assessment of the effects of certain public and private projects on the environment, art 6(1).

19 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 14(5)(a) (reg 14(5) amended by SI 2006/3106).

20 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 14(5)(b) (as amended: see note 19).

21 le in accordance with EEC Council Directive 92/43 (OJ L206, 22.7.92, p 7) on the assessment of the effects of certain public and private projects on the environment, art 7(4).

22 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 14(6)(a).

23 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 14(6)(b).

24 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 14(7)(a).

25 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 14(7)(b).

26 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 14(7)(c).

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25. Determination of applications.

Every consent¹ must include conditions to the effect that:

- 47 (1) work in relation to the relevant project² must be commenced within such period, not being more than five years beginning with the date consent is granted, as is specified in the consent³; and
- 48 (2) no work must be carried out in relation to the relevant project after the expiration of such period, not being more than ten years beginning with the date consent is granted, as is specified in the consent⁴,

and where an application is made to the Forestry Commissioners⁵ for consent they may, subject to the following provisions, either:

- 49 (a) grant consent either subject only to those conditions⁶ or also subject to such further conditions as they see fit⁷; or
- 50 (b) refuse consent⁸.

The Commissioners must not determine an application until after the expiry of the periods⁹ during which representations may be sent to the Commissioners or any period of consultation¹⁰ with an EEA state¹¹. In determining an application, the Commissioners must take into consideration the environmental information¹², any representations received by them in relation to the application and any other material consideration, including in particular their assessment of the direct and indirect effects of the relevant project¹³ on the specified environmental factors¹⁴.

1 As to references to 'consent' see PARA 13 note 2.

2 As to the meaning of 'relevant project' see PARA 12.

3 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 18(a).

4 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 18(b).

5 As to the Forestry Commissioners see PARA 34 et seq.

6 I.e. the conditions required by the Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 18: see the text and notes 1-4.

7 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 15(1)(a). At each of their Conservancy offices in England and Wales, the Commissioners must keep a register, so far as relating to the area of that Conservancy, of each determination under reg 15(1) and any accompanying statement of reasons: reg 24(1)(f), (h). Each register so kept must be available for inspection by the public at all reasonable hours: reg 24(2). As to the meaning of 'conservancy' for the purposes of the Forestry Act 1967 Pt II (ss 9-36) see s 35; and PARA 36 note 5.

8 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 15(1)(b). See note 7.

9 le the periods referred to in the Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 13: see PARA 23.

10 le in accordance with the Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 14: see PARA 24.

11 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 15(2). As to the meaning of 'EEA state' see PARA 13 note 9.

12 'Environmental information' means information in the environmental statement and any other information provided in accordance with the Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228 (see PARAS 12 et seq, 26 et seq) in relation to an application for consent or an appeal under reg 17 (see PARA 27) or reg 21 (see PARA 31) relating to the likely environmental effects of the project which is the subject of the application or, as the case may be, appeal: reg 2(1). As to the meaning of 'environmental statement' see PARA 19; and as to the meaning of 'project' see PARA 12 note 1. At each of their Conservancy offices in England and Wales, the Commissioners must keep a register, so far as relating to the area of that Conservancy, of each environmental statement received, including any further information: reg 24(1)(i). Each register so kept must be available for inspection by the public at all reasonable hours: reg 24(2).

13 As to the meaning of 'relevant project' see PARA 12.

14 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 15(3). The 'specified environmental factors' are the environmental factors specified in Sch 4, ie: (1) human beings, fauna and flora; (2) soil, water, air, climate and the landscape; (3) material assets and the cultural heritage; and (4) the interaction between the factors mentioned in heads (1)-(3).

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26. Notification of decisions.

Where an application for consent¹ has been determined by the Forestry Commissioners² they must:

- 51 (1) give notice in writing of their decision to the applicant and any person from whom they received representations in relation to the application, stating that they have taken into consideration the environmental information³ relating to the application and giving the reasons and considerations on which the decision was based⁴; and
- 52 (2) publish a notice of their decision in the newspapers in which notice of the application was published⁵ which gives details of the place and times at which the public may inspect a statement of:
 - 11 20. (a) the content of the Commissioners' decision and any conditions attached thereto⁶;
 21. (b) the main reasons and considerations on which the decision is based⁷; and
 22. (c) a description, where necessary, of the main measures to avoid, reduce and, if possible, offset the major adverse effects of the project⁸.

1 As to references to 'consent' see PARA 13 note 2.

2 As to the Forestry Commissioners see PARA 34 et seq.

3 As to the meaning of 'environmental information' see PARA 25 note 12.

4 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 16(a).

5 In accordance with the Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 13(1): see PARA 23.

6 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 16(b)(i).

7 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 16(b)(ii).

8 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 16(b)(iii). As to the meaning of 'project' see PARA 12 note 1.

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(D) APPEALS

27. Bringing of appeals against decisions of the Forestry Commissioners.

An applicant for consent¹ may appeal to the Secretary of State or the Welsh Ministers² where the Forestry Commissioners³:

- 53 (1) have refused the application⁴;
- 54 (2) have granted consent subject to conditions in addition to those prescribed⁵;
or
- 55 (3) have granted consent subject only to the prescribed conditions but have specified a period for the purposes of one or both of those conditions less than the maximum period⁶ permitted⁷.

Such an appeal must be made within 28 days or such longer period as the Secretary of State or the Welsh Ministers may allow, beginning with the date on which the applicant receives notification⁸ of the Commissioners' decision⁹. An appeal must be made by notice in writing to the Secretary of State or the Welsh Ministers accompanied by, or by copies of:

- 56 (a) the application to which it relates, and any documents provided by the applicant to the Commissioners in relation to it¹⁰;
- 57 (b) the decision of the Commissioners¹¹; and
- 58 (c) any other information or representations which the appellant wishes to provide or make¹².

On receipt of a notice of appeal duly made, the Secretary of State or the Welsh Ministers must send a copy of it to the Commissioners who must, within 28 days beginning with the date of receipt by them of the notice of appeal, supply to the Secretary of State or the Welsh Ministers copies of any representation or information provided to them in relation to the application¹³.

1 As to references to 'consent' see PARA 13 note 2.

2 As to the Secretary of State and the Welsh Ministers (referred to in these provisions as the 'appropriate authority') see PARA 2.

3 As to the Forestry Commissioners see PARA 34 et seq.

4 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 17(1)(a).

5 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 17(1)(b). The conditions 'prescribed' for these purposes are those required by reg 18: see PARA 25.

6 I.e. the maximum period permitted under the Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 18: see PARA 25.

7 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 17(1)(c).

8 le under the Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 16: see PARA 26.

9 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 17(2).

10 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 17(3)(a).

11 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 17(3)(b).

12 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 17(3)(c).

13 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 17(4).

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28. Determination of appeals.

The Secretary of State and the Welsh Ministers¹ must determine appeals² within 28 days, or such longer period as he or they reasonably may require, beginning with the date of receipt of the representations or information supplied³. In determining an appeal, the Secretary of State and the Welsh Ministers must take into consideration the environmental information⁴, any representations in relation to the appeal and any other material consideration, including in particular his or their assessment of the direct and indirect effects of the relevant project⁵ on the specified environmental factors⁶. On an appeal under these provisions, the Secretary of State and the Welsh Ministers may allow or dismiss the appeal or vary any part of the Forestry Commissioners'⁷ decision; and, where his or their decision is that consent should be granted, may accordingly grant consent either subject only to the prescribed conditions⁸ or also subject to such further conditions as he or they may determine⁹.

Where an appeal has been determined the Secretary of State and the Welsh Ministers must:

- 59 (1) give notice of the decision stating that this takes into consideration the environmental information relating to the application and giving the reasons and considerations on which the decision was based to:
 - 13 23. (a) the appellant¹⁰;
 24. (b) the Commissioners¹¹; and
 25. (c) any person from whom the Commissioners received representations in relation to the application to which the appeal relates¹²; and
- 14 60 (2) publish a notice of the decision in the newspapers in which the decision of the Commissioners to which the appeal relates was published¹³ which gives details of the place and times at which the public may inspect a statement of:
 - 15 26. (a) the content of the Secretary of State or the Welsh Ministers' decision and any conditions attached thereto¹⁴;
 27. (b) the main reasons and considerations on which the decision is based¹⁵; and
 28. (c) a description, where necessary, of the main measures to avoid, reduce and, if possible, offset the major adverse effects of the project¹⁶.

1 As to the Secretary of State and the Welsh Ministers (referred to in these provisions as the 'appropriate authority') see PARA 2.

2 As to the bringing of appeals against decisions of the Forestry Commissioners see PARA 27.

3 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 17(6). As to the supply of representations and information see reg 17(4); and PARA 27.

4 As to the meaning of 'environmental information' see PARA 25 note 12.

5 As to the meaning of 'relevant project' see PARA 12.

6 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 17(7). The 'specified' environmental factors are those specified in Sch 4: see PARA 25 note 14.

7 As to the Forestry Commissioners see PARA 34 et seq.

8 The conditions 'prescribed' for these purposes are those required by the Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 18: see PARA 25.

9 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 17(5).

10 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 17(8)(a)(i). At each of their Conservancy offices in England and Wales, the Commissioners must keep a register, so far as relating to the area of that Conservancy, of each determination received under reg 17(8) and any accompanying statement of reasons: reg 24(1)(g), (h). Each register so kept must be available for inspection by the public at all reasonable hours: reg 24(2). As to the meaning of 'conservancy' for the purposes of the Forestry Act 1967 Pt II (ss 9-36) see s 35; and PARA 36 note 5.

11 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 17(8)(a)(ii). See note 10.

12 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 17(8)(a)(iii). See note 10.

13 In accordance with the Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 16(b): see PARA 26.

14 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 17(8)(b)(i). See note 10.

15 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 17(8)(b)(ii). See note 10.

16 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 17(8)(b)(iii). See note 10. As to the meaning of 'project' see PARA 12 note 1.

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29. Application to the court by person aggrieved.

On the application of any person aggrieved by the grant of consent¹, the High Court may make an order quashing the consent where it is satisfied that the consent was given contrary to whichever of the relevant regulations applies² in the case or that the interests of the applicant have been substantially prejudiced by a failure to comply with any other requirement of those³ regulations⁴. Such an application must be made within six weeks from the date of publication⁵ of the decision⁶.

The court may by interim order, pending the determination of an application under these provisions, stay the operation of the consent on such terms as it may think fit⁷.

1 As to the meaning of 'person aggrieved' see **JUDICIAL REVIEW** vol 61 (2010) PARA 656; and as to references to 'consent' see PARA 13 note 2.

2 Ie whichever of the Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 15(3) (see PARA 25) or reg 17(7) (see PARA 28) applies: reg 19(1).

3 Ie the Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228 (see PARAS 12 et seq, 30 et seq).

4 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 19(1), (4).

5 Ie in accordance with the Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 16(b) (see PARA 26) or reg 17(8)(b) (see PARA 28).

6 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 19(2).

7 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 19(3).

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(E) ENFORCEMENT

30. Enforcement notices.

Where it appears to the Forestry Commissioners¹ that a person is carrying out or has carried out work in relation to a relevant project²:

- 61 (1) without consent³, where consent is⁴ required⁵; or
- 62 (2) in breach of a condition subject to which consent has been granted in relation to that relevant project⁶,

the Commissioners may serve an enforcement notice⁷ on that person⁸. An enforcement notice may require that the person on whom it is served must take such one or more of the following measures as appear to the Commissioners to be suitable in the circumstances:

- 63 (a) apply to the Commissioners for consent⁹;
- 64 (b) discontinue work in relation to the relevant project¹⁰;
- 65 (c) restore the land to its condition before any work in relation to the relevant project was carried out¹¹; and
- 66 (d) carry out on the land any works or operations, specified in the enforcement notice, which in the opinion of the Commissioners are reasonably necessary to secure compliance with any condition subject to which consent was granted or to remove or alleviate any injury to the environment which has been caused by the relevant project¹².

The notice must specify the period during which any of the measures mentioned in head (a), head (c) or head (d) above is to be taken and may specify different periods for different measures¹³.

Either an enforcement notice served under head (1) above must include or be accompanied by a written statement of the Commissioners' reasons for being of the opinion that the project¹⁴ is a relevant project¹⁵, or the Commissioners must serve such a written statement on the person on whom the enforcement notice was served as soon as practicable after serving the enforcement notice¹⁶; and either an enforcement notice must include or be accompanied by a notice explaining how, to whom and within what period an appeal may be brought and whether the requirements of the enforcement notice will be stayed while an appeal is pending, or the Commissioners must serve such a notice on the person on whom the enforcement notice was served as soon as practicable after serving the enforcement notice¹⁷.

The Commissioners may, at any time by a further notice served on the person on whom the enforcement notice was served, vary an enforcement notice¹⁸ and withdraw an enforcement notice¹⁹. It is specifically provided that a farmer²⁰ must not carry out work in relation to a relevant project in contravention of a requirement to discontinue that work in an enforcement notice served in accordance with these above provisions²¹ or fail, if he has been served with an enforcement notice in accordance with these provisions, to carry out any measure required by the notice²².

- 1 As to the Forestry Commissioners see PARA 34 et seq.
- 2 As to the meaning of 'relevant project' see PARA 12.
- 3 As to references to 'consent' see PARA 13 note 2.
- 4 le by the Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 4: see PARA 13.
- 5 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 20(1)(a).
- 6 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 20(1)(b).
- 7 Any reference to an enforcement notice in the Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228 (see the text and notes 1-6, 8-19; and PARAS 12 et seq, PARA 31 et seq) is to be construed as including, as the context requires, a reference to a notice of variation under reg 20(6)(a) (see the text and note 18) or to an enforcement notice as so varied: reg 2(2).
- 8 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 20(1). An enforcement notice may be served on any person: (1) by delivering it to him personally (reg 20(7)(a)); (2) by leaving it for him at his last known place of abode or business (reg 20(7)(b)); or (3) by sending it through the post addressed to him at his last known place of abode or business (reg 20(7)(c)). It may: (a) in the case of a body corporate, be served on the secretary or clerk of that body at the address of the registered or principal office of that body (reg 20(8)(a)); or (b) in the case of a partnership, be served on a partner or person having the control or management of the partnership business (reg 20(8)(b)).
- 9 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 20(2)(a).
- 10 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 20(2)(b).
- 11 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 20(2)(c).
- 12 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 20(2)(d).
- 13 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 20(3).
- 14 As to the meaning of 'project' see PARA 12 note 1.
- 15 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 20(4)(a).
- 16 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 20(4)(b).
- 17 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 20(5). As to appeals see PARA 31.
- 18 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 20(6)(a).
- 19 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 20(6)(b).
- 20 As to the meaning of 'farmer' for these purposes see **AGRICULTURAL PRODUCTION AND MARKETING** vol 1 (2008) PARA 754. As to the making of environmental impact assessments in connection with the restructuring of agricultural holdings and the use of uncultivated land see **AGRICULTURAL LAND** vol 1 (2008) PARA 638 et seq.
- 21 Common Agricultural Policy Single Payment and Support Schemes (Cross-compliance) (England) Regulations 2005, SI 2005/3459, Schedule para 16(2); Common Agricultural Policy Single Payment and Support Schemes (Cross Compliance) (Wales) Regulations 2004, SI 2004/3280, Schedule para 15(2).

22 Common Agricultural Policy Single Payment and Support Schemes (Cross-compliance) (England) Regulations 2005, SI 2005/3459, Schedule para 16(3); Common Agricultural Policy Single Payment and Support Schemes (Cross Compliance) (Wales) Regulations 2004, SI 2004/3280, Schedule para 15(3).

UPDATE

30 Enforcement notices

TEXT AND NOTES 21-22--SI 2005/3459 replaced: Agriculture (Cross compliance) Regulations 2009, SI 2009/3264.

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31. Appeals against enforcement notices.

Any person on whom an enforcement notice¹ has been served² may appeal to the Secretary of State or the Welsh Ministers³. Such an appeal must be made within 28 days, or such longer period as the Secretary of State or the Welsh Ministers may allow, beginning with the date on which the appellant receives the enforcement notice⁴. An appeal must be made by notice in writing to the Secretary of State or the Welsh Ministers accompanied by, or by copies of:

- 67 (1) the enforcement notice⁵;
- 68 (2) any relevant consent⁶; and
- 69 (3) any other information or representations which the appellant wishes to provide or make⁷.

On receipt of a notice of appeal duly made, the Secretary of State or the Welsh Ministers must send a copy of it to the Forestry Commissioners⁸ who must, within 28 days beginning with the date of receipt by them of the notice of appeal, supply to the Secretary of State or the Welsh Ministers copies of any representation or information provided to them in relation to any relevant consent or application for consent⁹.

The Secretary of State and the Welsh Ministers must determine an appeal within 28 days, or such longer period as he or they reasonably may require, beginning with:

- 70 (a) the date of receipt of the representations or information so supplied¹⁰; or
- 71 (b) where there is no consent or application for consent relevant to the enforcement notice, the date of receipt by the Secretary of State or the Welsh Ministers of the notice of appeal¹¹.

In determining an appeal, the Secretary of State and the Welsh Ministers must take into consideration any environmental information¹², any representations received by him or them in relation to the appeal, and any other material consideration, including in particular his or their assessment of the direct and indirect effects of the relevant project¹³ on the specified environmental factors¹⁴.

On an appeal under these provisions, the Secretary of State and the Welsh Ministers may¹⁵ allow or dismiss the appeal or vary any part of the enforcement notice¹⁶; but they must not allow an appeal against an enforcement notice served where it appears to the Commissioners that a person is carrying out or has carried out work without consent¹⁷ if it appears to them that consent is required¹⁸.

Where an appeal has been determined, the Secretary of State or the Welsh Ministers must give notice of the decision, giving the reasons and considerations on which the decision was based, to the appellant and the Commissioners¹⁹.

1 As to references to an enforcement notice see PARA 30 note 7.

2 In accordance with the Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 20: see PARA 30.

- 3 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 21(1). As to the Secretary of State and the Welsh Ministers (referred to in these provisions as the 'appropriate authority') see PARA 2. The making of an appeal under these provisions has the effect of suspending the operation of any requirement in the enforcement notice to which it relates to take measures described in reg 20(2)(a), (c) or (d) (see PARA 30) until the appeal is determined by the Secretary of State or the Welsh Ministers or, where the appeal is withdrawn, until withdrawal of the appeal: reg 21(10).
- 4 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 21(2).
- 5 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 21(3)(a).
- 6 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 21(3)(b). As to references to 'consent' see PARA 13 note 2.
- 7 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 21(3)(c).
- 8 As to the Forestry Commissioners see PARA 34 et seq.
- 9 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 21(4).
- 10 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 21(6)(a).
- 11 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 21(6)(b).
- 12 As to the meaning of 'environmental information' see PARA 25 note 12.
- 13 As to the meaning of 'relevant project' see PARA 12.
- 14 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 21(7). The 'specified environmental factors' are those specified in Sch 4: see PARA 25 note 14.
- 15 Ie subject to the Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 21(9): see the text and notes 17-18.
- 16 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 21(5).
- 17 Ie an enforcement notice served by virtue of the Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 20(1)(a): see PARA 30.
- 18 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 21(9). For these purposes the required consent is that required by reg 4: see PARA 13.
- 19 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 21(8).

Halsbury's Laws of England/FORESTRY (VOLUME 52 (2009) 5TH EDITION)/1. FORESTRY ADMINISTRATION/(1) FOREST LEGISLATION AND COURTS/(ii) Planning Legislation/B. ENVIRONMENTAL IMPACT ASSESSMENT/(E) Enforcement/32. Penalties for non-compliance with enforcement notices.

32. Penalties for non-compliance with enforcement notices.

It is an offence:

- 72 (1) for any person to carry out work in relation to a relevant project¹ in contravention of a requirement to discontinue that work in an enforcement notice² served³ on him⁴; or
- 73 (2) for any person on whom an enforcement notice has been served⁵ to fail, within the period specified in the enforcement notice, to carry out any measure, other than discontinuance of the relevant project, required by the enforcement notice⁶.

Where any such offence which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he as well as the body corporate is guilty of the offence and is liable to be proceeded against and punished accordingly⁷.

1 As to the meaning of 'relevant project' see PARA 12.

2 As to references to an enforcement notice see PARA 30 note 7.

3 In accordance with the Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 20: see PARA 30.

4 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 22(1). A person guilty of this offence is liable on summary conviction to a fine not exceeding the statutory maximum or on conviction on indictment to a fine: reg 22(1). The 'statutory maximum', with reference to a fine or penalty on summary conviction for an offence, is the prescribed sum within the meaning of the Magistrates' Courts Act 1980 s 32: see the Interpretation Act 1978 s 5, Sch 1 (definition added by the Criminal Justice Act 1988 Sch 15 para 58); and **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 140. The 'prescribed sum' means £5,000 or such sum as is for the time being substituted in this definition by order under the Magistrates' Courts Act 1980 s 143(1): see s 32(9) (amended by the Criminal Justice Act 1991 s 17(2)); and **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 141.

5 See note 3.

6 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 22(2). A person guilty of this offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale: reg 22(2). The 'standard scale' means the standard scale of maximum fines for summary offences as set out in the Criminal Justice Act 1982 s 37: see the Interpretation Act 1978 s 5, Sch 1 (definition added by the Criminal Justice Act 1988 Sch 15 para 58); and **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142. At the date at which this volume states the law, the standard scale is as follows: level 1, £200; level 2, £500; level 3, £1,000; level 4, £2,500; level 5, £5,000: Criminal Justice Act 1982 s 37(2) (substituted by the Criminal Justice Act 1991 s 17(1)). As to the determination of the amount of the fine actually imposed, as distinct from the level on the standard scale which it may not exceed, see the Criminal Justice Act 2003 s 164; and **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 144.

7 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 22(3).

Halsbury's Laws of England/FORESTRY (VOLUME 52 (2009) 5TH EDITION)/1. FORESTRY ADMINISTRATION/(1) FOREST LEGISLATION AND COURTS/(ii) Planning Legislation/B. ENVIRONMENTAL IMPACT ASSESSMENT/(E) Enforcement/33. Power of entry and default powers.

33. Power of entry and default powers.

Any person duly authorised in writing by the Forestry Commissioners¹ may² at any reasonable time enter any land on which he or the Commissioners reasonably suspects or suspect that work in relation to a relevant project³ is being or has been carried out:

- 74 (1) without consent⁴, where such consent is required⁵; or
- 75 (2) in breach of a condition subject to which consent has been granted⁶.

Where any measures required by an enforcement notice⁷, other than discontinuance of the relevant project, have not been taken within the period specified in the enforcement notice:

- 76 (a) any person duly authorised by the Commissioners may at any reasonable time enter the land to which the enforcement notice relates and take those measures⁸; and
- 77 (b) the Commissioners may recover from the person on whom the enforcement notice was served any expenses reasonably incurred by them in doing so⁹.

A person authorised under either of the above provisions to enter any land must, if so requested, produce evidence of his authority before so entering¹⁰.

1 As to the Forestry Commissioners see PARA 34 et seq.

2 le subject to the Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 23(2): see the text and notes 7-9.

3 As to the meaning of 'relevant project' see PARA 12.

4 As to references to 'consent' see PARA 13 note 2.

5 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 23(1)(a). For these purposes the required consent is that required by reg 4: see PARA 13.

6 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 23(1)(b).

7 le by virtue of the Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 20(2): see PARA 30. As to references to an enforcement notice see PARA 30 note 7.

8 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 23(2)(a).

9 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 23(2)(b).

10 Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 23(3).

Halsbury's Laws of England/FORESTRY (VOLUME 52 (2009) 5TH EDITION)/1. FORESTRY ADMINISTRATION/(2) THE FORESTRY COMMISSION/(i) Constitution and Committees/34. Constitution of Forestry Commission.

(2) THE FORESTRY COMMISSION

(i) Constitution and Committees

34. Constitution of Forestry Commission.

The Forestry Commission consists of a chairman and not more than ten other commissioners appointed by Her Majesty by warrant under the sign manual¹. At least three of the commissioners must be persons who have special knowledge and experience of forestry², at least one must be a person who has scientific attainments and a technical knowledge of forestry³, and at least one must be a person who has special knowledge and experience of the timber trade⁴. Members of the Forestry Commission are disqualified for membership of the House of Commons or of the National Assembly for Wales⁵.

The Commissioners are paid such salaries or other emoluments as may be determined by the Secretaries of State and the Welsh Ministers⁶ with the approval of the Treasury⁷, and may appoint and employ such officers and servants as they think necessary, and may remove officers and servants so appointed or employed⁸.

The Commissioners may be described as the Forestry Commissioners⁹; they may act by any three of their number, notwithstanding a vacancy, and may regulate their own procedure¹⁰. They have an official seal which is officially and judicially noticed¹¹, and which must be authenticated by a commissioner, the Commissioners' secretary, or some person authorised by them to act on behalf of the secretary¹².

Every document purporting to be an order or other instrument issued by the Commissioners and to be sealed and authenticated in the manner described above, or to be signed by the secretary to the Commissioners or any persons authorised by the Commissioners to act for the secretary, must be received in evidence, and is deemed to be such an order or instrument without further proof unless the contrary is shown¹³.

1 Forestry Act 1967 s 2(1) (amended by the Forestry Act 1981 s 5). Every commissioner holds and vacates office in accordance with the terms of his warrant of appointment, and a commissioner who vacates office is eligible for re-appointment: Forestry Act 1967 s 2(4), Sch 1 para 2(1).

2 Forestry Act 1967 s 2(2)(a).

3 Forestry Act 1967 s 2(2)(b).

4 Forestry Act 1967 s 2(2)(c).

5 See the House of Commons Disqualification Act 1975 s 1(1)(f), Sch 1 Pt II; the National Assembly for Wales (Disqualification) Order 2006, SI 2006/3335, art 2, Schedule Pt II; **PARLIAMENT** vol 78 (2010) PARA 908; **CONSTITUTIONAL LAW AND HUMAN RIGHTS**.

6 The Forestry Act 1967 Sch 1 para 8A (added by SI 1999/1747) provides that 'the Ministers' for the purposes of the Forestry Act 1967 Sch 1 Pt I (paras 1-8A) means the Minister of Agriculture, Fisheries and Food and the Secretary of State for Wales, but this should be read as referring to the Secretary of State for Environment, Food and Rural Affairs, the Secretary of State for Wales and the Welsh Ministers in accordance with the provisions cited in PARA 2. Ministerial functions under these provisions are to be exercised by them jointly, except in so far as they make arrangements that this provision is not to apply: Sch 1 para 8.

7 Forestry Act 1967 Sch 1 para 2(2). This Treasury function is not transferred in relation to Wales: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1; and PARA 2. Such salaries are payable out of money provided by Parliament, except in so far as they are met out of money held by the Commissioners in accordance with the Forestry Act 1967 s 41(6) or (7): see s 41(2)(a), (3); and PARAS 50-51.

8 Forestry Act 1967 Sch 1 para 6(1). The appointment of officers and servants is subject to such limits as to number as the Treasury may determine (Sch 1 para 6(1)), and they are paid such remuneration as the ministers may, with the approval of the Treasury, determine (Sch 1 para 6(2)). These Treasury functions are not transferred in relation to Wales: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1; and PARA 2. Such remuneration is payable out of money provided by Parliament, except in so far as they are met out of money held by the Commissioners in accordance with s 41(6) or (7): see s 41(2)(a), (3); and PARAS 50-51.

9 Forestry Act 1967 Sch 1 para 1.

10 Forestry Act 1967 Sch 1 para 3.

11 Forestry Act 1967 Sch 1 para 4(1).

12 Forestry Act 1967 Sch 1 para 4(2). The method of proof of documents provided by the Documentary Evidence Act 1868 as amended by the Documentary Evidence Act 1882 applies to documents issued by the Commissioners: Forestry Act 1967 Sch 1 para 5(2); and see **CIVIL PROCEDURE** vol 11 (2009) PARA 894.

13 Forestry Act 1967 Sch 1 para 5(1).

Halsbury's Laws of England/FORESTRY (VOLUME 52 (2009) 5TH EDITION)/1. FORESTRY ADMINISTRATION/(2) THE FORESTRY COMMISSION/(i) Constitution and Committees/35. Committees and delegation of functions.

35. Committees and delegation of functions.

The Forestry Commissioners¹ must appoint by order committees for England, Scotland and Wales respectively, consisting partly of members who are commissioners or their officers, and partly of members, not exceeding three in number, who are not commissioners or their officers². The Commissioners may delegate to these committees any of their functions³ subject to such restrictions or conditions as they think fit⁴. Any such order appointing a committee must make provision as to the constitution, including the terms of office of the members, quorum and procedure of the committee⁵. Members of such committees for England or Wales who are not commissioners or their officers are to be paid such travelling and other allowances as the Secretaries of State and the Welsh Ministers⁶ may determine⁷.

1 As to the Forestry Commissioners see PARA 34.

2 Forestry Act 1967 s 2(3).

3 As to the functions of the Commissioners see PARA 38 et seq.

4 Forestry Act 1967 s 2(3).

5 Forestry Act 1967 s 2(4), Sch 1 para 7(1).

6 As to the Secretaries of State and the Welsh Ministers see PARA 34 note 6. The function under the Forestry Act 1967 Sch 1 para 7(2) is transferred only so far as it relates to a committee for Wales appointed under s 2(3): see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1; and PARA 2.

7 Forestry Act 1967 Sch 1 para 7(2) (amended by SI 1999/1747; SI 2000/746). See further PARAS 50-51. Treasury approval is required in the case of a committee appointed for England: see the Forestry Act 1967 Sch 1 para 7(2).

Halsbury's Laws of England/FORESTRY (VOLUME 52 (2009) 5TH EDITION)/1. FORESTRY ADMINISTRATION/(2) THE FORESTRY COMMISSION/(i) Constitution and Committees/36. Advisory committees.

36. Advisory committees.

For the purpose of advising them as to the performance of their functions relating to the maintenance of adequate reserves of growing trees¹, the control of tree felling² and any other functions they determine, the Forestry Commissioners³ must maintain a central advisory committee known as the Home Grown Timber Advisory Committee⁴ and a regional advisory committee for each conservancy⁵. The Commissioners appoint the chairman and members of these committees, who hold and vacate office according to the instrument by which they are appointed⁶.

The Home Grown Timber Advisory Committee consists of not more than 25 members of whom (other than the chairman⁷) not fewer than 6 nor more than 8 are appointed after consultation with organisations representing owners of woodlands⁸, and not fewer than 6 nor more than 8 are appointed after consultation with organisations representing timber merchants⁹.

Every regional advisory committee consists of not fewer than 7 nor more than 12 members, of whom (apart from the chairman) not fewer than four are appointed by the Commissioners after consultation with organisations representing the interests of owners of woodlands and timber merchants, respectively, and organisations concerned with the study and promotion of forestry¹⁰.

1 Ie under the Forestry Act 1967 s 1(3): see PARA 38.

2 Ie under the Forestry Act 1967 Pt II (ss 9-36): see PARA 120 et seq.

3 As to the Forestry Commissioners see PARA 34.

4 Forestry Act 1967 s 37(1)(a). The power of the Commissioners under s 32 to make regulations (see PARA 37) is not exercisable except after consultation with the Home Grown Timber Advisory Committee: s 37(2) (substituted by SI 1999/1747).

5 Forestry Act 1967 s 37(1)(b). 'Conservancy' means any area in Great Britain (as to the meaning of which see PARA 2 note 2) which may for the time being be designated by the Commissioners as a conservancy for the performance of their functions: s 35.

6 Forestry Act 1967 s 38(1). The Commissioners may pay to the members of the committees such allowances as they may determine, with the consent of the Treasury: s 38(4). In relation to Wales, Treasury consent is required only with respect to the Home Grown Timber Advisory Committee: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1; and PARA 2.

7 Forestry Act 1967 s 38(2).

8 Forestry Act 1967 s 38(2)(a).

9 Forestry Act 1967 s 38(2)(b).

10 Forestry Act 1967 s 38(3) (amended by the Forestry Act 1991 s 1).

Halsbury's Laws of England/FORESTRY (VOLUME 52 (2009) 5TH EDITION)/1. FORESTRY ADMINISTRATION/(2) THE FORESTRY COMMISSION/(i) Constitution and Committees/37. Power to make regulations.

37. Power to make regulations.

After consulting with the Home Grown Timber Advisory Committee¹, the Forestry Commissioners² may by statutory instrument make regulations for prescribing anything authorised under the statutory provisions relating to the control of tree felling³ to be prescribed⁴. The Commissioners also have power by regulations to metricate measurements in enactments relating to particular forest lands in England and Wales⁵.

Any power given to the Commissioners to prescribe the manner in which a claim or notice may be made or given includes power to require that any particulars specified in the claim or notice must be verified by statutory declaration⁶.

1 See the Forestry Act 1967 ss 32(1), 37(2); and PARA 36 note 4. As to the committee see PARA 36.

2 As to the Forestry Commissioners see PARA 34.

3 Ie the Forestry Act 1967 Pt II (ss 9-36) (see PARA 120 et seq).

4 Forestry Act 1967 s 32(1). Regulations so made may make provision as regards England and Wales, or as regards Scotland: s 32(3) (substituted by SI 1999/1747). The following regulations have been made: the Forestry (Felling of Trees) Regulations 1979, SI 1979/791; the Forestry (Exceptions from Restriction of Felling) Regulations 1979, SI 1979/792; and the Forestry (Modification of Felling Restrictions) Regulations 1985, SI 1985/1958: see generally PARA 120 et seq.

5 Forestry Act 1979 s 2(2), (3), (5): this power enables the Commissioners to amend enactments contained in an Act (whether public general, local or private) so as to substitute: (1) for any reference to a number of acres, a reference to a number of hectares; (2) for any reference to a number of feet, a reference to a number of metres; and (3) for any requirement that plans be made on the scale of 3 chains to an inch, a requirement that they be made on the scale of 1:2,500; and for this purpose 'number' includes a number less than unity: s 2(2). Before making any such regulations, the Commissioners must consult such persons and organisations as appear to them to be representative of interests likely to be affected: s 2(4). Any such regulations are local in nature and are not recorded in this title.

6 Forestry Act 1967 s 32(2); and see **CIVIL PROCEDURE** vol 11 (2009) PARA 1024.

Halsbury's Laws of England/FORESTRY (VOLUME 52 (2009) 5TH EDITION)/1. FORESTRY ADMINISTRATION/(2) THE FORESTRY COMMISSION/(ii) Functions/38. General duties and powers.

(ii) Functions

38. General duties and powers.

The general duties of the Forestry Commissioners¹ are:

- 78 (1) promoting the interests of forestry²;
- 79 (2) the development of afforestation³;
- 80 (3) the production and supply of timber and other forest products in England, Scotland and Wales⁴; and
- 81 (4) promoting the establishment and maintenance of adequate reserves of growing trees in England, Scotland and Wales⁵.

In discharging their statutory functions⁶ the Commissioners must, so far as may be consistent with the proper discharge of those functions, endeavour to achieve a reasonable balance between:

- 82 (a) the development of afforestation, the management of forests and the production and supply of timber⁷; and
- 83 (b) the conservation and enhancement of natural beauty and the conservation of flora, fauna and geological or physiographical features of special interest⁸.

The Commissioners have powers under the Plant Health Act 1967 to make orders for controlling the introduction of, and spread of, tree pests and to make charges in connection with import and export licences and certificates, and they have extensive powers relating to the control of rabbits and vermin⁹.

The Commissioners have powers to:

- 84 (i) manage, plant and otherwise use for the purpose of their functions¹⁰ any land in England and Wales placed at their disposal by the Secretary of State and the Welsh Ministers¹¹;
- 85 (ii) plant, care for and manage trees in the interests of amenity on any land so placed at their disposal¹²;
- 86 (iii) undertake the management or supervision, upon such terms and subject to such conditions as may be agreed upon, or give assistance or advice in relation to the planting or management, of any woods or forests belonging to any person¹³;
- 87 (iv) purchase or otherwise acquire standing timber, and sell or otherwise dispose of any timber belonging to them or, subject to such terms as may be mutually agreed, belonging to a private owner, and generally promote the supply, utilisation and conversion of timber¹⁴;
- 88 (v) establish and carry on, or aid in the establishment and carrying on, of woodland industries¹⁵;
- 89 (vi) undertake the collection, preparation, publication and distribution of statistics relating to forestry, and promote and develop instruction and training in forestry by establishing or aiding schools or other educational institutions or in such other manner as they think fit¹⁶;

- 90 (vii) make, or aid in making, such inquiries, experiments and research and collect, or aid in collecting, such information as they think important, for promoting forestry and its teaching, and publish the results and disseminate the information¹⁷; and
- 91 (viii) make, or aid in making, such inquiries as they think necessary for securing an adequate supply of timber and other forest products in England, Scotland and Wales¹⁸.

For the purpose of the exercise of their functions under the Forestry Act 1967 so far as relating to land in England and Wales, or for the purpose of the exercise of their functions under head (vii) above, the Commissioners may:

- 92 (A) form, or participate in the forming of, a body corporate¹⁹;
- 93 (B) invest in a body corporate²⁰;
- 94 (C) provide loans²¹;
- 95 (D) establish a charitable trust²²; or
- 96 (E) act, or appoint a person to act, as an officer of a body corporate or as a trustee of a charitable trust²³;

but the powers contained in heads (B) and (C) above are exercisable only with Treasury approval²⁴.

Orders may be made by the Commissioners compelling an owner or occupier of any land to afford facilities for the haulage of timber across the land, on payment of rent and compensation for damage done²⁵. Any officer of the Commissioners, or other authorised person, may, on production of his authority, enter and survey land to ascertain its suitability for afforestation or to inspect any timber or for other purposes in connection with the Commissioners' functions²⁶.

The Commissioners are designated regulators for the purposes of the Regulatory Enforcement and Sanctions Act 2008²⁷.

1 As to the Forestry Commissioners see PARA 34.

2 Forestry Act 1967 s 1(2).

3 Forestry Act 1967 s 1(2).

4 Forestry Act 1967 s 1(2) (amended by SI 1999/1747).

5 Forestry Act 1967 s 1(3) (amended by SI 1999/1747).

6 I.e. their functions under the Forestry Acts 1967 and 1979.

7 Forestry Act 1967 s 1(3A)(a) (s 1(3A) added by the Wildlife and Countryside (Amendment) Act 1985 s 4).

8 Forestry Act 1967 s 1(3A)(b) (as added: see note 7).

9 See the Plant Health Act 1967 ss 2, 3, 4A; PARA 63 et seq; and **AGRICULTURAL PRODUCTION AND MARKETING** vol 1 (2008) PARAS 1017, 1018. As to vermin and pests generally see PARA 62, and as to restrictions on importing timber see PARA 63 et seq. As to the Commissioners' duties in relation to the New Forest see PARA 6.

10 I.e. their functions under the Forestry Act 1967 and the Countryside Act 1968 s 24(1): Forestry Act 1967 s 3(1) (amended by SI 1999/1747); Countryside Act 1968 s 24(1).

11 Forestry Act 1967 s 3(1) (as amended: see note 10). The Forestry Act 1967 s 49 provides that in that Act 'the minister' means, except as provided by Sch 1 (see PARA 34 note 6), the Secretary of State as respects England and the Secretary of State as respects Wales (definition substituted by SI 1999/1747 and amended by SI 2002/794), and the Countryside Act 1968 s 49 provides that 'the minister', as respects Wales and Monmouthshire, means the Secretary of State, and otherwise means the Minister of Housing and Local

Government, but these provisions should be read as referring to the Secretary of State and the Welsh Ministers in accordance with the provisions cited in PARA 2.

The power to manage and use land conferred by the Forestry Act 1967 s 3(1) includes, without prejudice to the generality of that power, power to erect buildings or execute works on the land (s 3(1)(a)), but it does not include power to provide residential sites for travellers on that land (*R (on the application of Kanssen) v Secretary of State for Environment, Food and Rural Affairs* [2005] EWHC 1024 (Admin) at [17]-[19], [2005] All ER (D) 456 (May)). Any timber produced on land so placed at the Commissioners' disposal belongs to the Commissioners: Forestry Act 1967 s 3(1)(b). 'Timber' includes all forest products: s 3(4).

12 Countryside Act 1968 s 24(1). This power is without prejudice to the provisions of s 11 (see PARA 39; and **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 665): s 24(1).

13 Forestry Act 1967 s 3(2). This provision applies to woods and forests belonging to any person, managed by the Crown Estate Commissioners, controlled by a government department or belonging to a local authority: s 3(2). As to the Crown Estate and the Crown Estate Commissioners see **CROWN PROPERTY** vol 12(1) (Reissue) PARAS 278-299.

14 Forestry Act 1967 s 3(3)(a).

15 Forestry Act 1967 s 3(3)(b).

16 Forestry Act 1967 s 8(1)(a) (s 8(1) numbered as such by SI 2006/780).

17 Forestry Act 1967 s 8(1)(b) (as renumbered: see note 16). The Commissioners may exploit any intellectual property or intangible assets arising from the carrying out of any such activity: s 8(2) (ss 7A, 8(2), (3) added by SI 2006/780). For this purpose 'intellectual property' includes any patent, trademark, copyright, design right, registered design or plant breeder's right: s 8(3) (as so added).

18 Forestry Act 1967 s 8(1)(c) (as renumbered (see note 16); amended by SI 1999/1747).

19 Forestry Act 1967 s 7A(1)(a) (as added: see note 17).

20 Forestry Act 1967 s 7A(1)(b) (as added: see note 17).

21 Forestry Act 1967 s 7A(1)(c) (as added: see note 17).

22 Forestry Act 1967 s 7A(1)(d) (as added: see note 17).

23 Forestry Act 1967 s 7A(1)(e) (as added: see note 17).

24 Forestry Act 1967 s 7A(2) (as added: see note 17).

25 Forestry Act 1967 s 6(2). These provisions have effect where the Commissioners believe insufficient facilities exist for the haulage of timber from a wood or forest to a road, railway or waterway: s 6(1). The order cannot be made until the person proposed to be required to give the facilities has had an opportunity of being heard: s 6(3). Any person aggrieved by the order may, where the order is made in respect of land in England and Wales, appeal therefrom to the Secretary of State or the Welsh Ministers in such manner and upon such conditions, if any, as may be prescribed by him or them, who may thereupon revoke or vary the order: s 6(4)(a) (s 6(4) substituted by SI 1999/1747). As to the meaning of 'person aggrieved' see **JUDICIAL REVIEW** vol 61 (2010) PARA 656. In default of agreement, the rent or compensation must be assessed by a single arbitrator appointed by the President of the Royal Institution of Chartered Surveyors: Forestry Act 1967 s 6(5)(a).

26 Forestry Act 1967 s 48(1).

27 As to regulators designated for the purpose of imposing sanctions see the Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6; and **ADMINISTRATIVE LAW**.

Halsbury's Laws of England/FORESTRY (VOLUME 52 (2009) 5TH EDITION)/1. FORESTRY ADMINISTRATION/(2) THE FORESTRY COMMISSION/(ii) Functions/39. Amenity, recreation and conservation of natural beauty.

39. Amenity, recreation and conservation of natural beauty.

The Forestry Commissioners¹ must have regard to the desirability of conserving the natural beauty and amenity of the countryside in the exercise of their functions relating to land², but without prejudice to that requirement may, on any land placed at their disposal, plant, care for and manage trees in the interests of amenity³. Furthermore, in the exercise of their functions connected with the provision of access to the countryside the Commissioners must have regard to the protection against water pollution⁴.

On any land placed at their disposal by the Secretary of State or the Welsh Ministers⁵, the Commissioners may provide⁶, or arrange for or assist in the provision of, tourist, recreational or sporting facilities and any ancillary equipment, facilities or works including, without prejudice to that generality, accommodation for visitors, camping and caravan sites, places for meals and refreshments, picnic places, places for enjoying views, parking places, routes for nature study and footpaths, information and display centres, shops in connection with any of these facilities, and public conveniences⁷. They may make such charges as they think fit or allow another person to make such charges as that other person thinks fit in connection with any such facilities⁸; but any arrangements between the Commissioners and another person entered into pursuant to this power that provide for the sharing of profits are subject to Treasury approval⁹. For the purpose of the exercise of their functions under these provisions¹⁰ so far as relating to land in England and Wales, the Commissioners may:

- 97 (1) form, or participate in the forming of, a body corporate¹¹;
- 98 (2) invest in a body corporate¹²;
- 99 (3) provide loans¹³;
- 100 (4) establish a charitable trust¹⁴; or
- 101 (5) act, or appoint a person to act, as an officer of a body corporate or as a trustee of a charitable trust¹⁵,

but the powers contained in heads (2) and (3) above are exercisable only with Treasury approval¹⁶.

1 As to the Forestry Commissioners see PARA 34 et seq.

2 See the Countryside Act 1968 s 11; and **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 665.

3 See the Countryside Act 1968 s 24(1); and PARA 38.

4 See the Countryside Act 1968 s 38; and **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 529.

5 As to the Secretary of State and the Welsh Ministers see PARA 2.

6 For these purposes 'provide' includes manage, maintain and improve: Countryside Act 1968 s 23(2).

7 Countryside Act 1968 s 23(1), (2). The powers of the Commissioners under s 23(2) may not be exercised in relation to land in the New Forest (see the New Forest Act 1949 s 18 and the New Forest Act 1964 s 6) except with the agreement of the verderers: New Forest Act 1970 s 1(2). The Countryside Council for Wales has power to act as agent for the Commissioners in the exercise of their powers under the Countryside Act 1968 s 23(2): s 23(5) (amended by the Natural Environment and Rural Communities Act 2006 Sch 11 Pt 1 para 50, Sch 12). As to the Countryside Council for Wales see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 524.

8 Countryside Act 1968 s 23(2) (amended by SI 2006/780).

9 Countryside Act 1968 s 23(2A) (added by SI 2006/780). All expenses incurred, and all sums received, by the Commissioners in the exercise of their powers under the Countryside Act 1968 s 23 are to be defrayed, or as the case may be treated, in accordance with the Forestry Act 1967 s 41 (see PARAS 50-51): Countryside Act 1968 s 23(6) (substituted by SI 2000/746).

10 le their functions under the Countryside Act 1968 s 23(2) (see the text and notes 5-8) and s 24(1) (see PARA 38).

11 Countryside Act 1968 s 24A(1)(a) (s 24A added by SI 2006/780).

12 Countryside Act 1968 s 24A(1)(b) (as added: see note 11).

13 Countryside Act 1968 s 24A(1)(c) (as added: see note 11).

14 Countryside Act 1968 s 24A(1)(d) (as added: see note 11).

15 Countryside Act 1968 s 24A(1)(e) (as added: see note 11).

16 Countryside Act 1968 s 24A(2) (as added: see note 11).

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40. Grants and loans.

The Forestry Commissioners¹ may, with Treasury approval as regards England and Wales, make grants and loans to owners and lessees of land for and in connection with the use and management of the land for forestry purposes².

Further, the Forestry Commissioners may make, with the approval of the Treasury, such grants to the verderers of the New Forest as the Commissioners think fit in respect of expenditure incurred or to be incurred by the verderers for the purposes of, or in connection with, the discharge of their functions under the New Forest Acts 1877 to 1970³.

1 As to the Forestry Commissioners see PARA 34 et seq.

2 Forestry Act 1979 s 1(1) (amended by SI 1999/1747). Any such grant or loan is payable in accordance with the Forestry Act 1967 s 41 (see PARAS 50-51); Forestry Act 1979 s 1(2) (substituted by SI 2000/746). Nothing in the Farm Land and Rural Development Act 1988 s 2 (grants for conversion of agricultural land to woodland, etc) or in any scheme thereunder prejudices the Commissioners' powers to pay grants under these provisions: see s 2(7); and **AGRICULTURAL PRODUCTION AND MARKETING** vol 1 (2008) PARA 1351.

3 See the Agriculture and Forestry (Financial Provisions) Act 1991 s 4; and PARA 6.

Halsbury's Laws of England/FORESTRY (VOLUME 52 (2009) 5TH EDITION)/1. FORESTRY ADMINISTRATION/(2) THE FORESTRY COMMISSION/(ii) Functions/41. Power to make byelaws.

41. Power to make byelaws.

The Forestry Commissioners¹ may make byelaws with respect to any land under their management or control to which the public has, or may be permitted to have, access², for the preservation of trees, timber and the Commissioners' property³, for prohibiting or regulating any act or thing tending to injury or disfigurement of the land or its amenities⁴, and in particular for regulating the reasonable use of the land by the public for the purposes of exercise and recreation⁵. No byelaw made under these provisions may take away or injuriously affect any person's estate, interest, right of common or other right in or affecting the land without that person's consent⁶, or may apply to any regulated common⁷; and no byelaw may be made with respect to the New Forest or the Forest of Dean except after consultation with the verderers concerned⁸. Byelaws in respect of land in England and Wales are made by statutory instrument⁹. The Commissioners may authorise any of their officers or servants to exercise and perform on their behalf such powers and duties as they may consider necessary for the enforcement of such byelaws, and, in particular, to remove or exclude from land to which the byelaws relate any person who commits, or is reasonably suspected of committing, any offence against either the Vagrancy Act 1824 or the byelaws¹⁰. Failure to comply with or contravention of a byelaw made by the Commissioners, or the obstruction of any officer or servant of the Commissioners in the exercise of his duties in that behalf, is an offence¹¹.

Byelaws made by the Commissioners under these provisions are without prejudice to any byelaws made by the verderers of the New Forest or of the Forest of Dean under any other enactment¹², and any powers conferred upon the verderers of those forests by these provisions are in addition to and not in derogation of powers previously exercisable by them¹³.

The Commissioners may also make byelaws for regulating the reasonable use by the public of the tourist, recreational or sporting facilities provided for them under the Countryside Act 1968¹⁴, and for regulating the use of land and waterways by traffic, the lighting of fires and the disposal of litter as provided for in that Act¹⁵.

1 As to the Forestry Commissioners see PARA 34 et seq.

2 Forestry Act 1967 s 46(1). As to the byelaws that have been made see the Forestry Commission Byelaws 1982, SI 1982/648; and PARA 42.

3 Forestry Act 1967 s 46(2)(a).

4 Forestry Act 1967 s 46(2)(b).

5 Forestry Act 1967 s 46(2)(c).

6 Forestry Act 1967 s 46(3)(a).

7 Forestry Act 1967 s 46(3)(b). 'Regulated common' means any common which is subject to a scheme or regulation made in pursuance of the Metropolitan Commons Acts 1866 to 1898, the Inclosure Acts 1845 to 1882 or the Commons Act 1899: Forestry Act 1967 s 46(3)(b). As to regulations under those Acts see **COMMONS** vol 13 (2009) PARA 586 et seq.

8 Forestry Act 1967 s 47(1).

9 Forestry Act 1967 s 46(4) (amended by SI 1999/1747). Statutory instruments so made, being local in nature, are not recorded in this work.

10 Forestry Act 1967 s 48(2). As to offences against the Vagrancy Act 1824 see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 833 et seq.

11 Forestry Act 1967 s 46(5). The offence is punishable on summary conviction by a fine not exceeding level 2 on the standard scale and, in the case of a continuing offence, by a further fine not exceeding 50p per day: s 46(5) (amended by virtue of the Criminal Justice Act 1982 ss 39(2), 46, Sch 3; by the Criminal Justice Act 1967 Sch 6; and by virtue of the Decimal Currency Act 1969 s 10(1)). As to the standard scale see PARA 32 note 6. In their forest courts (see PARA 7) the verderers of the New Forest and of the Forest of Dean may exercise jurisdiction in relation to any alleged offence against a byelaw (Forestry Act 1967 s 47(3)), and for this purpose those courts are deemed to be magistrates' courts (see s 47(4); the Magistrates' Courts Act 1980; and **MAGISTRATES** vol 29(2) (Reissue) PARA 583), but this is without prejudice to the right of any other court to inquire into an offence against a byelaw (Forestry Act 1967 s 47(5)).

12 Forestry Act 1967 s 47(1). See PARA 7; and *Verderers of the New Forest v Young* [2003] EWHC 3253 (Admin), [2004] 1 EGLR 1, [2003] All ER (D) 308 (Dec), DC.

13 Forestry Act 1967 s 47(5).

14 See PARA 39; and **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 529.

15 See the Countryside Act 1968 ss 23(4), 41(3); and **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 566.

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42. Contents of byelaws.

The byelaws made by the Forestry Commissioners¹ prohibit persons on the lands of the Commissioners² from:

- 102 (1) entering any area entry to which is prohibited by notice³;
- 103 (2) entering buildings, structures or mines unless access is permitted or implied by notice⁴;
- 104 (3) leaving open or obstructing any gate or movable barrier giving access to any inclosed plantation or other inclosed area⁵;
- 105 (4) lighting fires or stoves or leaving lighted matches, tobacco, cigars or cigarettes⁶;
- 106 (5) removing or damaging buildings, walls, gates, stiles, fences, railings, posts, chains, seats, drains, pipelines, notice boards, rubbish receptacles or anything belonging to the Forestry Commissioners⁷;
- 107 (6) displaying notices, placards or bills⁸;
- 108 (7) digging up, removing, cutting or injuring trees, shrubs or plants, whether living or not, or removing the seeds therefrom, or digging up or removing soil, turf, leaf-mould, moss, peat, gravel, slag, sands or minerals of any kind⁹;
- 109 (8) disturbing or removing archaeological or historical remains¹⁰;
- 110 (9) operating metal detectors¹¹;
- 111 (10) setting up or placing caravans, tents, booths, stalls or other erections¹²;
- 112 (11) turning out animals or fowls to graze or feed or allowing them to remain on the lands of the Commissioners¹³;
- 113 (12) permitting animals in their charge to be out of control¹⁴;
- 114 (13) riding or leading horses, except in the New Forest or on public bridleways or bridleways specified by the Commissioners¹⁵;
- 115 (14) permitting dogs for which they are responsible to disturb, worry or chase birds or animals or, on being requested by an officer of the Commissioners, failing to keep dogs on leashes¹⁶;
- 116 (15) plying for hire with, or letting out for hire, mechanically-propelled vehicles or horses or other animals¹⁷;
- 117 (16) selling or distributing anything or offering or exposing anything for sale¹⁸;
- 118 (17) setting up beehives¹⁹;
- 119 (18) wilfully disturbing, injuring, catching, netting, destroying or taking birds, fish, reptiles or animals, or taking birds' eggs²⁰;
- 120 (19) catching or netting butterflies, moths or dragonflies for the purposes of any collection²¹;
- 121 (20) wilfully disturbing, damaging or destroying the burrows, dens, sets or lairs of wild animals²²;
- 122 (21) carrying or using firearms, shotguns, bows or other missile weapons, or ammunition or missiles for use with them²³;
- 123 (22) damming, obstructing or restraining the flow of watercourses, breaking their banks or opening or closing sluices belonging to the Commissioners²⁴;
- 124 (23) operating aircraft, gliders, hot-air balloons, boats, rafts or craft of any kind, or model aircraft, boats or cars²⁵;
- 125 (24) playing or practising games or sports in such a manner as to disturb the peaceful use of the lands or endanger the public or animals²⁶;

- 126 (25) playing musical instruments or operating radios or other apparatus for producing sound or images so as to cause annoyance²⁷;
- 127 (26) wilfully obstructing, disturbing or annoying in any manner anyone lawfully in or on the Commissioners' lands²⁸;
- 128 (27) wilfully breaking bottles or other glass objects²⁹;
- 129 (28) placing or leaving (except in receptacles provided for the purpose by the Commissioners or by any other competent authority) any kind of litter, rubbish, filth or refuse³⁰;
- 130 (29) discharging or causing or directing to be discharged sewage or other noxious substances or dangerous chemicals so as to constitute a nuisance³¹;
- 131 (30) delivering public speeches, lectures, sermons or addresses, or holding or taking part in any kind of public meetings, processions, exhibitions or festivals³²;
- 132 (31) wilfully evading payment of any charges or tolls levied by the Commissioners for the use of car parks or forest roads³³;
- 133 (32) bringing or causing to be brought on to the Commissioners' lands any machine or vehicle other than a perambulator or wheelchair drawn or propelled by hand and used solely for the conveyance of a child or children or an invalid³⁴;
- 134 (33) driving a motor vehicle as a learner driver or without an efficient silencer³⁵; or
- 135 (34) parking or leaving motor vehicles unattended between the hours of sunset and sunrise except by the side of a highway for a stop of reasonable duration for refreshment or other reasonable cause³⁶.

In addition, further specific byelaws apply to the New Forest³⁷, the Forest of Dean³⁸ and the Arboretum and Pinetum³⁹.

1 As to making byelaws see PARA 41. Those currently in force are the Forestry Commission Byelaws 1982, SI 1982/648. As to the Forestry Commissioners see PARA 34 et seq.

2 'Lands of the Commissioners' means those lands which are under the management or control of the Forestry Commissioners and to which the public have, or may be permitted to have, access: Forestry Commission Byelaws 1982, SI 1982/648, byelaw 2. These include the New Forest in the County of Hampshire; the Bedgebury Pinetum, Car Park and Forest Plots, Kent; the Westonbirt Arboretum and Car Park, Silk Wood and the Downs, Gloucestershire; and the Forest of Dean as specified in Sch 1: byelaw 2.

3 Forestry Commission Byelaws 1982, SI 1982/648, byelaw 5(i).

4 Forestry Commission Byelaws 1982, SI 1982/648, byelaw 5(ii).

5 Forestry Commission Byelaws 1982, SI 1982/648, byelaw 5(iii).

6 Forestry Commission Byelaws 1982, SI 1982/648, byelaw 5(iv).

7 Forestry Commission Byelaws 1982, SI 1982/648, byelaw 5(v).

8 Forestry Commission Byelaws 1982, SI 1982/648, byelaw 5(vi).

9 Forestry Commission Byelaws 1982, SI 1982/648, byelaw 5(vii).

10 Forestry Commission Byelaws 1982, SI 1982/648, byelaw 5(viii).

11 Forestry Commission Byelaws 1982, SI 1982/648, byelaw 5(ix).

12 Forestry Commission Byelaws 1982, SI 1982/648, byelaw 5(x).

13 Forestry Commission Byelaws 1982, SI 1982/648, byelaw 5(xi).

14 Forestry Commission Byelaws 1982, SI 1982/648, byelaw 5(xii).

15 Forestry Commission Byelaws 1982, SI 1982/648, byelaw 5(xiii).

- 16 Forestry Commission Byelaws 1982, SI 1982/648, byelaw 5(xiv).
- 17 Forestry Commission Byelaws 1982, SI 1982/648, byelaw 5(xv).
- 18 Forestry Commission Byelaws 1982, SI 1982/648, byelaw 5(xvi).
- 19 Forestry Commission Byelaws 1982, SI 1982/648, byelaw 5(xvii).
- 20 Forestry Commission Byelaws 1982, SI 1982/648, byelaw 5(xviii).
- 21 Forestry Commission Byelaws 1982, SI 1982/648, byelaw 5(xix).
- 22 Forestry Commission Byelaws 1982, SI 1982/648, byelaw 5(xx).
- 23 Forestry Commission Byelaws 1982, SI 1982/648, byelaw 5(xxi).
- 24 Forestry Commission Byelaws 1982, SI 1982/648, byelaw 5(xxii).
- 25 Forestry Commission Byelaws 1982, SI 1982/648, byelaw 5(xxiii).
- 26 Forestry Commission Byelaws 1982, SI 1982/648, byelaw 5(xxiv).
- 27 Forestry Commission Byelaws 1982, SI 1982/648, byelaw 5(xxv).
- 28 Forestry Commission Byelaws 1982, SI 1982/648, byelaw 5(xxvi).
- 29 Forestry Commission Byelaws 1982, SI 1982/648, byelaw 5(xxvii).
- 30 Forestry Commission Byelaws 1982, SI 1982/648, byelaw 5(xxviii).
- 31 Forestry Commission Byelaws 1982, SI 1982/648, byelaw 5(xxix).
- 32 Forestry Commission Byelaws 1982, SI 1982/648, byelaw 5(xxx).
- 33 Forestry Commission Byelaws 1982, SI 1982/648, byelaw 5(xxxi).
- 34 Forestry Commission Byelaws 1982, SI 1982/648, byelaw 6(1). This does not apply to the parking of any vehicle by the side of a highway or where the Commissioners provide an area for use for the parking or stopping of vehicles of any specified class or classes, to the bringing into the car park of a vehicle of the specified class or classes or to the use of any such vehicle on a route or way specified by the Commissioners for obtaining access to the car park: byelaw 6(2)(a). If the car park or access route or way is provided by the Commissioners for use only during a specified period of the day, the exception does not apply in relation to vehicles at any other time: byelaw 6(2)(b).
- 35 Forestry Commission Byelaws 1982, SI 1982/648, byelaw 7(i), (ii).
- 36 Forestry Commission Byelaws 1982, SI 1982/648, byelaw 7(iii).
- 37 Forestry Commission Byelaws 1982, SI 1982/648, byelaws 10, 11.
- 38 Forestry Commission Byelaws 1982, SI 1982/648, byelaw 12.
- 39 Forestry Commission Byelaws 1982, SI 1982/648, byelaws 8, 9. As to the Arboretum and the Pinetum see note 2.

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(3) MINISTERIAL POWERS OVER LAND AND ACQUISITION OF LAND

43. Control over the Forestry Commissioners.

In exercising their statutory functions¹, the Forestry Commissioners² must comply with directions given to them by the Secretary of State and the Welsh Ministers³ jointly, in relation to the exercise of their functions as regards England and Wales, except in so far as the Secretary of State and the Welsh Ministers make arrangements to exclude this requirement⁴.

The Commissioners must, on such day and in such form as the Secretary of State⁵ may direct, submit to the Secretary of State an annual report as to their proceedings under the Forestry Act 1967, other than such proceedings as regards Scotland, and the Secretary of State must lay the report before Parliament⁶.

1 In exercising their functions under the Forestry Act 1967, and also exercising their powers under the Plant Health Act 1967 (which enables them to make orders for the control of timber pests and diseases: see PARA 62).

2 As to the Forestry Commissioners see PARA 34 et seq; and as to their functions see PARA 38.

3 As to the Secretary of State and the Welsh Ministers see PARA 2.

4 Forestry Act 1967 s 1(4)(a), (5) (s 1(4)(a) substituted by SI 1999/1747).

5 The exercise of this function as respects Wales has not transferred to the Welsh Ministers: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1; and PARA 2.

6 Forestry Act 1967 s 45(3) (substituted by SI 1999/1747; amended by SI 2000/746).

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44. Ministerial powers over land.

Any land in England and Wales acquired by the Secretary of State or the Welsh Ministers¹, and not for the time being placed at the disposal of the Forestry Commissioners² for the exercise of their functions³ may be managed and used by the Secretary of State and the Welsh Ministers as he thinks, or they think, fit⁴. The Secretary of State and the Welsh Ministers may let any such land or grant any interest or right in or over it⁵. Except for land in the Forest of Dean, the Secretary of State and the Welsh Ministers may dispose of such land for any purpose⁶. Any such land in the Forest of Dean may be disposed of by the Secretary of State only if in his opinion it is not needed or ought not to be used for afforestation or any purposes connected with forestry, or he may exchange the land for more suitable land and pay or receive money for equality of exchange⁷.

If the Secretary of State sells or the Welsh Ministers sell any land exceeding two hectares which had been transferred to him or them or the Commissioners⁸ and the compensation for the transfer has not been fully paid, a part of the proceeds of sale must be paid to the Crown Estate Commissioners to form part of the Crown Estate and to satisfy the outstanding part of the debt⁹.

In carrying out their functions under the Forestry Act 1967 the Secretary of State has and the Welsh Ministers have a duty to have regard to the national interest in maintaining and expanding the forestry resources of England and Wales¹⁰.

1 As to the Secretary of State and the Welsh Ministers see PARA 2. As to acquisition by the Secretary of State and the Welsh Ministers see PARA 45.

2 As to the Forestry Commissioners see PARA 34 et seq.

3 As to the Forestry Commissioners' functions in relation to land see PARA 38.

4 Forestry Act 1967 s 39(3)(a) (s 39(3) amended by SI 1999/1747). This includes power to erect buildings or execute works: Forestry Act 1967 s 39(3)(a).

5 Forestry Act 1967 s 39(3)(b).

6 Forestry Act 1967 s 39(2), (2A) (s 39(2) substituted, s 39(2A) added, by the Forestry Act 1981 s 1; Forestry Act 1967 s 39(2) amended by SI 1999/1747).

7 Forestry Act 1967 s 39(2A) (as added: see note 6).

8 I.e. under the provisions of the Forestry (Transfer of Woods) Act 1923 s 1(1)(a) (repealed): Forestry Act 1967 s 43(1).

9 Forestry Act 1967 s 43(1) (amended by the Forestry Act 1979 s 2(1), Sch 1); and see PARA 51. As to the Crown Estate and the Crown Estate Commissioners see **CROWN PROPERTY** vol 12(1) (Reissue) PARAS 278-299.

10 Forestry Act 1967 s 8A (added by the Forestry Act 1981 s 4; amended by SI 1999/1756).

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45. Acquisition by Secretary of State and Welsh Ministers.

By agreement the Secretary of State and the Welsh Ministers¹ as regards England and Wales may acquire by purchase, lease or exchange, or may purchase compulsorily, any land which in his or their opinion is suitable for afforestation, or purposes connected with forestry, or which must necessarily be acquired together with such land, and may place it at the Forestry Commissioners' disposal². They may acquire land in proximity to land placed by them at the disposal of the Commissioners so as to enable the Commissioners to provide tourist, recreational or sporting facilities³ and may also acquire land which in their opinion ought to be used for planting trees in the interests of amenity or partly for that purpose and partly for afforestation, together with any other land which must necessarily be acquired with it; land so acquired may be placed at the Commissioners' disposal⁴.

Land held inalienably by the National Trust may not, however, be compulsorily acquired⁵; and the following descriptions of land are also not subject to compulsory purchase:

- 136 (1) land which is the site of an ancient monument or other object of archaeological interest⁶;
- 137 (2) land which forms part of a park, garden or pleasure ground⁷ or of a home farm attached to and usually occupied with a mansion house or which is otherwise required for the amenity or convenience of a dwelling house⁸;
- 138 (3) land which belongs to a local authority⁹;
- 139 (4) land which has been acquired by statutory undertakers¹⁰ for the purposes of their undertaking¹¹; and
- 140 (5) land held or used by a universal service provider¹² for any purpose in connection with the provision of a universal postal service within the meaning of the Postal Services Act 2000¹³.

The power of compulsory purchase also does not apply to land in respect of which a forestry dedication covenant is in force¹⁴ and which is managed in accordance with an approved plan of operations¹⁵.

1 As to the Secretary of State and the Welsh Ministers see PARA 2.

2 Forestry Act 1967 ss 39(1), 40(1) (amended by SI 1999/1747). As to the Forestry Commissioners see PARA 34 et seq. As to the acquisition of land by compulsory purchase see PARAS 46-49. Where the Secretary of State acquires or the Welsh Ministers acquire land otherwise than compulsorily, the provisions of the Compulsory Purchase Act 1965 Pt I (ss 1-32) apply with certain modifications: see the Forestry Act 1967 s 39(6), Sch 4 (amended by SI 1999/1747); and **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 549 et seq.

The repeal of the Forestry Act 1945 s 4(5) does not affect the Secretary of State and the Welsh Ministers' obligation to hold land subject to any terms and conditions applicable by virtue of that provision, so far as any such obligation continued to subsist immediately before the date of commencement of the Forestry Act 1967 (ie 22 March 1967); nor does it alter the construction of any conveyance, lease or other instrument for whose construction that provision had effect immediately before the date of commencement: s 50(2), Sch 7 Pt II para 2.

3 Countryside Act 1968 s 23(3). As to the provision of these services see PARA 39.

4 Countryside Act 1968 s 24(2) (amended by the Abolition of Feudal Tenure etc (Scotland) Act 2000 s 76(1), (2), Sch 12 para 29(1), (3), Sch 13).

5 Forestry Act 1967 s 40(4) (substituted by the Forestry Act 1981 s 2).

6 Forestry Act 1967 s 40(2)(a).

7 In order to be exempt, the park or pleasure ground must be required for the amenity or convenience of a dwelling house: see *R v Minister of Health, ex p Waterlow & Sons Ltd* [1946] KB 485, [1946] 2 All ER 189, DC. 'Park' is here used in its popular sense, but a park need not be large, and land may be a park although it is let for grazing: *Re Ripon (Highfield) Housing Confirmation Order 1938, White and Collins v Minister of Health* [1939] 2 KB 838, [1939] 3 All ER 548, CA.

8 Forestry Act 1967 s 40(2)(b).

9 Forestry Act 1967 s 40(2)(c). 'Local authority' means the council of a county, county borough, district, parish or community, the Common Council of the City of London and the council of a London borough: s 40(2)(c) (i) (amended by SI 1974/595; and by virtue of the Local Government (Wales) Act 1994 s 17(1), (2), (4), (5)). As to the English counties and their councils see **LOCAL GOVERNMENT** vol 69 (2009) PARA 24 et seq. As to the district councils in England see **LOCAL GOVERNMENT** vol 29(1) (Reissue) PARA 23 et seq. As to county and county borough councils in Wales see **LOCAL GOVERNMENT** vol 29(1) (Reissue) PARA 41 et seq. As to parishes and communities generally see **LOCAL GOVERNMENT** vol 29(1) (Reissue) PARA 23 et seq. As to administrative areas and authorities in London see **LONDON GOVERNMENT** vol 29(2) (Reissue) PARA 29 et seq. As to the Common Council of the City of London see **LONDON GOVERNMENT** vol 29(2) (Reissue) PARAS 51-55.

10 'Statutory undertakers' means any persons authorised by an Act, or order or scheme made under it, to construct, work or carry on any railway, canal, inland navigation, dock, harbour, tramway or other public undertaking: Forestry Act 1967 s 40(2)(d) (amended by the Gas Act 1986 Sch 9 Pt I; the Electricity Act 1989 Sch 18; and the Water Act 1989 Sch 27 Pt I).

11 Forestry Act 1967 s 40(2)(d).

12 Ie within the meaning of the Postal Services Act 2000: see **POST OFFICE**.

13 Forestry Act 1967 s 40(2)(e) (added by SI 2001/1149).

14 See PARA 116 et seq.

15 Forestry Act 1967 s 40(3). See further PARA 118.

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46. Compulsory purchase orders.

The Secretary of State's and the Welsh Ministers' powers of compulsory acquisition¹ must be exercised by means of an order made in accordance with the Forestry Act 1967², and for that purpose certain provisions of the Compulsory Purchase Act 1965 are incorporated³. The order itself may provide for the incorporation of provisions of the Railways Clauses Consolidation Act 1845, and for the adaptation and modification of those provisions⁴. The powers of compulsory purchase cannot be exercised after three years have elapsed from the coming into operation of the order⁵.

1 As to the power of compulsory acquisition see PARA 45. As to the Secretary of State and the Welsh Ministers see PARA 2.

2 See the Forestry Act 1967 s 40(5)(a), Sch 5 paras 1-5; and PARA 47.

3 See the Forestry Act 1967 s 40(5)(c), Sch 5 para 11 (amended by the Statute Law (Repeals) Act 1974 Schedule Pt III). As to the power to acquire land under the Compulsory Purchase Act 1965 see **COMPULSORY ACQUISITION OF LAND**.

4 See the Forestry Act 1967 Sch 5 para 12; and **COMPULSORY ACQUISITION OF LAND; MINES, MINERALS AND QUARRIES** vol 31 (2003 Reissue) PARA 145.

5 See the Compulsory Purchase Act 1965 s 4 (amended by the Housing (Consequential Provisions) Act 1985 s 3, Sch 1 Pt I; applied by the Forestry Act 1967 Sch 5 para 11(1)); and **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 617.

Halsbury's Laws of England/FORESTRY (VOLUME 52 (2009) 5TH EDITION)/1. FORESTRY ADMINISTRATION/(3) MINISTERIAL POWERS OVER LAND AND ACQUISITION OF LAND/47. Procedure for making compulsory purchase orders.

47. Procedure for making compulsory purchase orders.

A compulsory purchase order must describe the land to which it refers by reference to a map¹. Before making an order the Secretary of State or the Welsh Ministers² in relation to England and Wales must:

- 141 (1) publish in one or more newspapers circulating in the locality in which it is situated a notice stating that it is proposed to make an order³, describing the land⁴ and naming the place at which the draft order and related map may be seen at all reasonable hours⁵ and specifying the time (not less than 28 days from publication of the notice) within which and the manner in which objections to the order may be made⁶; and
- 142 (2) serve⁷ a copy of the notice on every owner, lessee and occupier (except tenants for a month or shorter period) of land to which the order relates⁸.

If no objection is duly made either by persons on whom notices have been served or by persons appearing to the Secretary of State or the Welsh Ministers to be affected, or if all objections are withdrawn, the Secretary of State or the Welsh Ministers may, if he thinks or they think fit, make the order, with or without modifications⁹. Where objection is duly made to the order a local inquiry must be held, and the Secretary of State or the Welsh Ministers must consider any objections not withdrawn and the report of the person who held the inquiry, and may then make the order with or without modifications¹⁰. Except in the case of the acquisition of worked ironstone land within the ironstone district¹¹, the order becomes subject, if relating to England, to special parliamentary procedure¹². An objection may be disregarded¹³ if it appears to the Secretary of State or the Welsh Ministers to relate exclusively to compensation and similar matters which can be dealt with by the Lands Chamber of the Upper Tribunal¹⁴.

1 Forestry Act 1967 s 40(5), Sch 5 para 1. As to the procedure on the compulsory acquisition of land see generally **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 556 et seq.

2 As to the Secretary of State and the Welsh Ministers see PARA 2.

3 Forestry Act 1967 Sch 5 para 2(1)(a) (Sch 5 paras 2-5 amended by SI 1999/1747).

4 Forestry Act 1967 Sch 5 para 2(3)(a).

5 Forestry Act 1967 Sch 5 para 2(3)(b).

6 Forestry Act 1967 Sch 5 para 2(3)(c).

7 The service may be in any manner the Secretary of State thinks or the Welsh Ministers think fit: Forestry Act 1967 Sch 5 para 2(1)(b). As to service of notices see s 30, applied by Sch 5 para 2(2); and PARA 154.

8 Forestry Act 1967 Sch 5 para 2(1)(b).

9 Forestry Act 1967 Sch 5 para 3(1) (as amended: see note 3). Where the order is made with modifications it cannot authorise the compulsory purchase of any land which the draft order did not authorise unless all persons interested consent to the purchase: Sch 5 para 3(3).

10 Forestry Act 1967 Sch 5 para 3(2) (as amended: see note 3). These provisions are subject to Sch 5 para 3(3) (see note 9): Sch 5 para 3(2).

11 See the Mineral Workings Act 1985 s 6(3). 'Worked ironstone land' means land which has been excavated in the course of winning and working ironstone by opencast operations, and includes land on which materials extracted in the course of such operations have been deposited (s 9); as to the 'ironstone district' see Sch 1.

12 le procedure governed by the Statutory Orders (Special Procedure) Acts 1945 and 1965 (see **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 605; **PARLIAMENT** vol 34 (Reissue) PARA 912 et seq): Forestry Act 1967 Sch 5 para 4 (as amended: see note 3). As to the exercise of transferred functions and the bringing of subordinate legislation made by the Welsh Ministers before the National Assembly for Wales see the Government of Wales Act 2006 Sch 3 para 9, Sch 11 paras 33-35; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS**.

13 le for the purposes of the Forestry Act 1967 Sch 5 para 3: Sch 5 para 5.

14 Forestry Act 1967 Sch 5 para 5 (as amended: see note 3). The Lands Chamber of the Upper Tribunal acquired jurisdiction under the Lands Tribunal Act 1949 s 1(3): see **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 721.

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48. Validity and operation of compulsory purchase orders.

As soon as may be after making a compulsory purchase order, the Secretary of State or the Welsh Ministers¹ must:

- 143 (1) publish in one or more newspapers circulating in the locality in which the land is situated a notice stating that the order has been made, the place at which a copy may be seen at all reasonable hours together with the related map² and, where the order is subject to special parliamentary procedure, that it is to be laid before Parliament³; and
- 144 (2) serve a like notice on every person who has made an objection to the order⁴.

Any person aggrieved by the order who desires to question its validity⁵ may apply to the High Court within six weeks after the first publication of the notice or, where the order is subject to special parliamentary procedure, after the order became operative⁶. The court may make an interim order suspending the operation of the order either generally or so far as it affects the applicant's property until the final determination of proceedings⁷ and, if satisfied that the order is not within the powers of the Forestry Act 1967 or that the applicant's interests have been substantially prejudiced through requirements of the Act not having been complied with, the court may quash the order either generally or so far as it relates to the applicant's property⁸. Subject to these provisions, however, the order may not be questioned by a prohibiting or quashing order or in any legal proceedings whatsoever either before or after the order is made⁹.

1 As to the Secretary of State and the Welsh Ministers see PARA 2.

2 Forestry Act 1967 s 40(5), Sch 5 para 7(1)(a).

3 Forestry Act 1967 Sch 5 para 7(3). As to the procedure see PARA 47.

4 Forestry Act 1967 Sch 5 para 7(1)(b). As to service of notices see s 30, applied by Sch 5 para 7(2); and PARA 154.

5 I.e. on the ground that it is ultra vires or that a statutory requirement has not been complied with: Forestry Act 1967 Sch 5 para 8(1). As to persons aggrieved see **JUDICIAL REVIEW** vol 61 (2010) PARA 656.

6 Forestry Act 1967 Sch 5 para 8(1), (3). As to the date on which an order subject to special parliamentary procedure becomes operative see the Statutory Orders (Special Procedure) Act 1945 ss 4(3), 6(1); and **PARLIAMENT** vol 34 (Reissue) PARA 925. An order not subject to special parliamentary procedure becomes operative six weeks after notice of it is first published: Forestry Act 1967 Sch 5 para 10.

7 Forestry Act 1967 Sch 5 para 8(2)(a).

8 Forestry Act 1967 Sch 5 para 8(2)(b). The provisions of Sch 5 para 8 do not apply where the order is confirmed under the Statutory Orders (Special Procedure) Act 1945 s 6: Forestry Act 1967 Sch 5 para 8(1), (3).

9 Forestry Act 1967 Sch 5 para 9 (amended by virtue of SI 2004/1033). As to prohibiting and quashing orders see **JUDICIAL REVIEW** vol 61 (2010) PARA 693 et seq.

Halsbury's Laws of England/FORESTRY (VOLUME 52 (2009) 5TH EDITION)/1. FORESTRY ADMINISTRATION/(3) MINISTERIAL POWERS OVER LAND AND ACQUISITION OF LAND/49. Repayment of afforestation grants on compulsory acquisition of land.

49. Repayment of afforestation grants on compulsory acquisition of land.

On compulsory acquisition, grants made by the Forestry Commission¹ after 26 March 1945² in respect of the land acquired (other than advances made more than 30 years before the date of service of notice to treat) become repayable with compound interest at the rate of 3 per cent, and are recoverable by deduction from the compensation and not otherwise³. Where the compensation is for one of several interests in the land, a proportionate amount only of the advances and interest is recoverable⁴.

1 le made under the Forestry Act 1967 s 4 (repealed), and under the Forestry Act 1919 s 3(3) (repealed): Forestry Act 1967 s 40(6); and see PARA 40.

2 le two years before the date on which the Forestry Act 1947 was passed.

3 Forestry Act 1967 s 40(6).

4 Forestry Act 1967 s 40(6) proviso.

Halsbury's Laws of England/FORESTRY (VOLUME 52 (2009) 5TH EDITION)/1. FORESTRY ADMINISTRATION/(4) FINANCE AND PENSIONS/50. Salaries, superannuation, allowances and expenses.

(4) FINANCE AND PENSIONS

50. Salaries, superannuation, allowances and expenses.

The following expenses, that is:

- 145 (1) the salaries of the Forestry Commissioners¹ and the salaries or remuneration of the officers and servants of the Commissioners²;
- 146 (2) all expenses incurred by the Commissioners, including the cost of any grant or loan made by them, in the exercise of their functions under or by virtue of the Forestry Act 1967, including the payment of allowances to the members of any committee maintained by them under that Act³, or any other enactment⁴;
- 147 (3) any superannuation benefits paid⁵ in respect of the Commissioners and officers employed by them⁶;
- 148 (4) any administrative expenses of the Secretary of State and the Welsh Ministers under the statutory provisions relating to the control of tree-felling⁷, including sums required for the payment of remuneration to the members of any committee of reference appointed⁸ by him or them⁹;
- 149 (5) all capital payments made by the Secretary of State and the Welsh Ministers in acquiring land¹⁰ and any expenses incurred by them in managing such land and any rent or other outgoings payable in respect of such land¹¹,

but excluding any expenses payable out of the Scottish Consolidated Fund¹², are payable out of money provided by Parliament, except in so far as they are met¹³ out of money held by the Commissioners¹⁴. Where any such expenses incurred by the Secretary of State or the Welsh Ministers are to be met out of money held by the Commissioners, they must make payments to him for that purpose¹⁵.

1 As to the Forestry Commissioners see PARA 34 et seq.

2 Forestry Act 1967 s 41(2)(a) (s 41(1)-(4), (4A) substituted by SI 1999/1747 (Forestry Act 1967 s 41(4A) having been added by the Forestry Act 1981 s 3); Forestry Act 1967 s 41(2), (3) substituted, s 41(3A) added, by SI 2000/746).

3 As to such committees see PARAS 35-36.

4 Forestry Act 1967 s 41(2)(b) (as substituted: see note 2).

5 I.e. under the Forestry Act 1967 Sch 1 para 9 or under a scheme made by virtue of Sch 1 para 10. There may be granted to or in respect of the Forestry Commissioners, and to such classes of officers employed by the Commissioners as may be determined by the Secretary of State and the Welsh Ministers with the approval of the Treasury, the same superannuation benefits (which includes a superannuation allowance, additional allowance, annual allowance, retiring allowance, compensation allowance, gratuity, pension, compensation and annuity) as can be granted in respect of persons in the civil service under the principal civil service pension scheme within the meaning of the Superannuation Act 1972 s 2 and for the time being in force, and the relevant provisions of that scheme have effect accordingly with respect to such persons as they have effect with respect to persons in the civil service: Sch 1 para 9(1), (2), (4) (Sch 1 para 9(1), (2) amended by the Superannuation Act 1972 Sch 6; the Finance Act 1972 Sch 28). As to the principal civil service scheme see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 576 et seq.

The Forestry Act 1967 Sch 1 para 13A (added by SI 1999/1747) provides that 'the Ministers' for the purposes of the Forestry Act 1967 Sch 1 Pt II (paras 9-12A) means the Minister of Agriculture, Fisheries and Food and the

Secretary of State for Wales, but this should be read as referring to the Secretary of State for Environment, Food and Rural Affairs, the Secretary of State for Wales and the Welsh Ministers in accordance with the provisions cited in PARA 2. Ministerial functions under these provisions are to be exercised by them jointly, except in so far as they make arrangements that this provision is not to apply: Sch 1 para 13. The Treasury function under Sch 1 para 9(1) is not transferred in relation to Wales: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1; and PARA 2.

The Secretary of State and the Welsh Ministers may with the approval of the Treasury make schemes to supplement or replace (either as a whole or in part) the Forestry Act 1967 Sch 1 para 9(2), being schemes for the grant of superannuation and other allowances and gratuities to or for the benefit of persons to whom Sch 1 para 9 applies; and, without prejudice to the foregoing:

- 18 (1) the superannuation benefits to be granted in accordance with the scheme may include those which may be granted under Sch 1 para 9(2), subject to the provisions of Sch 1 para 9(2) in the case of contributory pensions (Sch 1 para 10(1)(a)); and
- 19 (2) on the coming into force of a scheme made under this provision, Sch 1 para 9(2) ceases, to the extent that the scheme makes any provision different therefrom, to have effect (Sch 1 para 10(1)(b)).

The Treasury function under Sch 1 para 10(1) is not transferred in relation to Wales: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1; and PARA 2.

Where on the death of a person to whom the Forestry Act 1967 Sch 1 para 9 applies any sum not exceeding £5,000 is due to that person or his legal personal representative in respect of salary, wages or superannuation benefits, then, subject to any regulations made by the Treasury, probate or other proof of the title of the legal personal representatives may be dispensed with, and that sum may be paid or distributed to or among the persons appearing to the Commissioners to be beneficially entitled to the personal estate of the deceased person, or to or among any one or more of those persons, or, in the case of the illegitimacy of the deceased person or any of his children, to or among such persons as the Commissioners may think fit, and the Commissioners or other person responsible for the payment of any such sum are discharged from all liability in respect of any such payment or distribution: see Sch 1 para 12 (amended by SI 1984/539; and by the Superannuation Act 1972 Sch 6).

6 Forestry Act 1967 s 41(2)(c) (as substituted: see note 2).

7 Ie the Forestry Act 1967 Pt II (ss 9-36): see PARA 120 et seq.

8 Ie appointed under the Forestry Act 1967 s 27: see PARA 127. The Secretary of State and the Welsh Ministers may pay to the members of any committee appointed by him or them under s 27 such remuneration as he or they may, with the consent of the Treasury as regards England, determine: s 27(4) (amended by SI 1999/1747).

9 Forestry Act 1967 s 41(2)(d) (as substituted: see note 2).

10 Ie under the Forestry Act 1967 s 39: see PARAS 44-45.

11 Forestry Act 1967 s 41(2)(e) (as substituted: see note 2).

12 Ie by virtue of the Forestry Act 1967s 41(4) (as substituted (see note 2); amended by SI 2000/746).

13 Ie in accordance with the Forestry Act 1967 s 41(6) or (7): see PARA 51.

14 Forestry Act 1967 s 41(3) (as substituted: see note 2).

15 Forestry Act 1967 s 41(3A) (as substituted: see note 2).

Halsbury's Laws of England/FORESTRY (VOLUME 52 (2009) 5TH EDITION)/1. FORESTRY ADMINISTRATION/(4) FINANCE AND PENSIONS/51. Receipts from sale of timber etc and gifts.

51. Receipts from sale of timber etc and gifts.

The former Forestry Fund¹ has been wound up and any balance in it paid to the Forestry Commissioners². All sums received by the Commissioners in respect of:

- 150 (1) the sale of timber or any other transactions carried out by them in the exercise of their statutory functions³; or
- 151 (2) any other exercise of those functions or functions other enactment⁴,

must be held by the Commissioners for the purpose of meeting the specified expenses⁵.

The following sums received by the Secretary of State and the Welsh Ministers⁶ must be paid by him or them to the Commissioners and held by him or them for the purpose of meeting those expenses:

- 152 (a) any capital sum received from the sale, lease or exchange of land acquired by him or them⁷ and all sums received by him or them from the letting or use of such land⁸; and
- 153 (b) all sums received under the specified provisions of the New Forest Act 1949⁹.

The Secretary of State and the Welsh Ministers may, however, direct:

- 154 (i) that sums received by the Commissioners falling within heads (1) and (2) above, or by the Secretary of State or the Welsh Ministers falling within heads (a) and (b) above, or both, which are specified or of a description specified in the direction¹⁰; or
- 155 (ii) that all such sums received by the Commissioners, or by the Secretary of State or the Welsh Ministers, or any of those persons, as are specified in the direction¹¹,

are not to be subject to the provisions set out above¹² but are instead to be paid into the Consolidated Fund¹³. The power to give such a direction includes power to vary or revoke a previous direction under this power¹⁴.

In the event of the hereditary revenues of the Crown ceasing to form part of the Consolidated Fund¹⁵, compensation is to be paid to the Crown Estate Commissioners¹⁶ for any transfers of Crown woods and forests to the Commissioners¹⁷.

The Forestry Commissioners may accept any gift made to them for all or any of the purposes of the Forestry Act 1967, and, subject to the terms of the gift, may apply it for those purposes in accordance with regulations made by them¹⁸.

1 le the Forestry Fund constituted under the Forestry Act 1919 s 8 (repealed).

2 See the Forestry Act 1967 s 41(1) (substituted by SI 1999/1747). As to the Forestry Commissioners see PARA 34 et seq; and as to their powers and duties see PARA 38 et seq.

3 Forestry Act 1967 s 41(6)(a) (s 41(6)-(9) added by SI 2000/746). The Commissioners' statutory functions are their functions under the Forestry Act 1967; as to which see PARA 38 et seq.

- 4 Forestry Act 1967 s 41(6)(b) (as added: see note 3).
- 5 Forestry Act 1967 s 41(6) (as added: see note 3). The 'specified' expenses are those to which s 41(2) applies: see PARA 50.
- 6 As to the Secretary of State and the Welsh Ministers see PARA 2.
- 7 le under the Forestry Act 1967 s 39: see PARAS 44-45.
- 8 Forestry Act 1967 s 41(7)(a) (as added: see note 3).
- 9 Forestry Act 1967 s 41(7)(b) (as added: see note 3). The specified provisions of the New Forest Act 1949 are ss 16-18.
- 10 Forestry Act 1967 s 41(8)(a) (as added: see note 3).
- 11 Forestry Act 1967 s 41(8)(b) (as added: see note 3).
- 12 le to the Forestry Act 1967 s 41(6) or, as the case may be, s 41(7) (see the text and notes 3-9).
- 13 Forestry Act 1967 s 41(8) (as added: see note 3). As to the Consolidated Fund see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 711 et seq. Treasury approval is required in the case of England: see s 41(8) (as so added).
- 14 Forestry Act 1967 s 41(9) (as added: see note 3).
- 15 le under the provisions of the Civil List Act 1952 s 1: see **CROWN PROPERTY** vol 12(1) (Reissue) PARA 207.
- 16 As to the Crown Estate and the Crown Estate Commissioners see **CROWN PROPERTY** vol 12(1) (Reissue) PARAS 278-299.
- 17 Forestry Act 1967 s 43(2). Compensation is made as due to the Crown under the Forestry (Transfer of Woods) Act 1923 s 3 (repealed), reduced by the amount of payments already made under the Forestry Act 1967 s 43(1) (see PARA 44), or the Crown Estate Act 1961 s 8(1) (repealed): see the Forestry Act 1967 s 43(2).
- 18 Forestry Act 1967 s 41(5). As to the purposes of the Act see PARA 38 et seq.

Halsbury's Laws of England/FORESTRY (VOLUME 52 (2009) 5TH EDITION)/1. FORESTRY ADMINISTRATION/(5) SECURITY OF TENURE FOR FORESTRY WORKERS AND BUSINESSES/52. Forestry workers.

(5) SECURITY OF TENURE FOR FORESTRY WORKERS AND BUSINESSES

52. Forestry workers.

Qualifying forestry¹ workers housed by their employers are given security of tenure if they are not already entitled to it because they are mere licensees or because they pay a low rent: in the case of tenancies entered into on or after 15 January 1989², protection is afforded by the Housing Act 1988³, while in the case of tenancies entered into on or after 1 October 1977⁴ and before 15 January 1989, protection is afforded by the Rent (Agriculture) Act 1976⁵. The Protection from Eviction Act 1977 also provides special statutory protection for the very limited class of agricultural workers (including forestry workers) who occupy premises under the terms of their employment as persons employed in agriculture but who are not statutory tenants under the Rent (Agriculture) Act 1976⁶.

1 Forestry falls within the statutory definition of 'agriculture' for these purposes and includes the use of land for nursery grounds for trees and the use of land for woodlands where that use is ancillary to the use of land for other agricultural purposes: see the Rent (Agriculture) Act 1976 s 1(1)(a)(v), (b), (3), Sch 1; and **LANDLORD AND TENANT** vol 27(2) (2006 Reissue) PARA 1136. As to 'forestry' within the wider statutory definition of 'agriculture' see PARA 3.

2 Ie the date on which the Housing Act 1988 ss 24, 25 were brought into force by virtue of s 141(3).

3 See the Housing Act 1988 ss 24-25 (applying the definition of 'agriculture' referred to in note 1); and **LANDLORD AND TENANT** vol 27(2) (2006 Reissue) PARAS 1184-1186. As to agricultural accommodation generally see further **AGRICULTURAL PRODUCTION AND MARKETING** vol 1 (2008) PARAS 1295-1296.

4 Ie the date on which the Rent (Agriculture) Act 1976 was brought into force in relation to forestry workers by virtue of s 1(7), Sch 3 para 8 and the Rent (Agriculture) Act 1976 (Commencement No 2) Order 1977, SI 1977/1268.

5 See **LANDLORD AND TENANT** vol 27(2) (2006 Reissue) PARA 1134 et seq. As to the special protection from eviction afforded to forestry workers who are not statutory tenants under the Rent (Agriculture) Act 1976 see **LANDLORD AND TENANT** vol 27(2) (2006 Reissue) PARAS 1194-1195.

6 See the Protection from Eviction Act 1977 s 4; and **LANDLORD AND TENANT** vol 27(2) (2006 Reissue) PARAS 1194-1195.

Halsbury's Laws of England/FORESTRY (VOLUME 52 (2009) 5TH EDITION)/1. FORESTRY ADMINISTRATION/(5) SECURITY OF TENURE FOR FORESTRY WORKERS AND BUSINESSES/53. Forestry businesses.

53. Forestry businesses.

Forestry does not fall within the statutory definition of 'agriculture' for the purposes of the Agricultural Holdings Act 1986 or the Agricultural Tenancies Act 1995¹, and a forestry business, as opposed to the use of land for woodlands where that use is ancillary to the farming of land for other agricultural purposes, does not, therefore, enjoy the protection of either of those Acts², although it seems that a tenancy held by or for the purposes of such a business may be a business tenancy for the purposes of the security of tenure provisions of the Landlord and Tenant Act 1954³ and the provisions of the Landlord and Tenant Act 1927 relating to compensation for improvements and goodwill on the termination of business tenancies⁴. The common law rules regarding property in timber trees⁵ may need to be excluded under the terms of any lease held by or for the purposes of a forestry business.

1 See the Agricultural Holdings Act 1986 s 96(4); the Agricultural Tenancies Act 1995 s 38(2); and **AGRICULTURAL LAND** vol 1 (2008) PARA 324.

2 As to the protection of agricultural holdings under the Agricultural Holdings Act 1986 see **AGRICULTURAL LAND** vol 1 (2008) PARA 321 et seq; and as to the more limited protection of farm business tenancies under the Agricultural Tenancies Act 1995 see **AGRICULTURAL LAND** vol 1 (2008) PARA 301 et seq. See also **LANDLORD AND TENANT** vol 27(2) (2006 Reissue) PARAS 806-807.

3 Ie for the purposes of the Landlord and Tenant Act 1954 Pt II (ss 23-46): see **LANDLORD AND TENANT** vol 27(2) (2006 Reissue) PARA 701 et seq.

4 Ie for the purposes of the Landlord and Tenant Act 1927 Pt I (ss 1-17): see **LANDLORD AND TENANT** vol 27(2) (2006 Reissue) PARA 788. Agricultural holdings and farm business tenancies are expressly excluded from such protection (see s 43(1)(a), (aa); and **LANDLORD AND TENANT** vol 27(2) (2006 Reissue) PARA 708); but the legislation is silent on the subject of forestry businesses.

5 See PARA 55.

Halsbury's Laws of England/FORESTRY (VOLUME 52 (2009) 5TH EDITION)/2. TIMBER AND TREES/(1) IN GENERAL/54. Meaning of 'timber'.

2. TIMBER AND TREES

(1) IN GENERAL

54. Meaning of 'timber'.

At common law oak, ash and elm are timber¹ if over 20 years old, but not so old as to have no usable wood in them. Other trees may be timber by the custom of the country². Thus beech is timber by the custom of Buckinghamshire³ and parts of Gloucestershire⁴. Aspen and horse-chestnut are timber in some counties⁵. Trees less than six inches in diameter have been said not to be timber⁶.

Agricultural usages between landlord and tenant also frequently define the species of trees which are regarded as timber in the localities where the usages subsist⁷. In a contract for the sale of standing timber, 'timber' may be synonymous with 'trees' and so include lops and tops as well as trunks⁸. By statute, for certain purposes, 'timber' includes all forest products⁹.

1 'Timber' in a contract for sale of timber on land refers to trees recognised as timber at common law, which is its primary meaning (*Re Tower's Contract* [1924] WN 331), but it may have a different meaning in special contracts. Thus, on a sale to a sawmill company it was held to mean all timber trees growing which were reasonably fit for use in the company's business and not restricted to trees which could be felled and sold at a profit at the date of the contract for sale: *Swift v David* (1912) 107 LT 71, PC.

2 *Honywood v Honywood* (1874) LR 18 Eq 306; *R v Minchin-Hampton Inhabitants* (1762) 3 Burr 1308.

3 *Dashwood v Magniac* [1891] 3 Ch 306 at 324; and see *Aubrey v Fisher* (1809) 10 East 446.

4 *R v Minchin-Hampton Inhabitants* (1762) 3 Burr 1308.

5 See *R v Ferrybridge Inhabitants* (1823) 1 B & C 375, where many old authorities are epitomised.

6 *Whitty v Lord Dillon* (1860) 2 F & F 67.

7 *Whitty v Lord Dillon* (1860) 2 F & F 67; and see *Aubrey v Fisher* (1809) 10 East 446, where the usage was pleaded as an immemorial custom. Existence from time immemorial is not, however, a necessary characteristic of such a custom: *Dashwood v Magniac* [1891] 3 Ch 306 at 370, CA, per Kay LJ; and see *Countess of Cumberland's Case* (1610) Moore KB 812; *Palmer's Case* (1611) Co Litt 53a note (10); *Cuffly v Pindar* (1616) Hob 219; *Layfield v Cowper* (1694) 1 Wood 330; *Duke of Chandos v Talbot* (1731) 2 P Wms 601 at 606.

8 *Skipwith v Homewoods Sawmills Ltd* [1938] 2 All ER 733.

9 See the Forestry Act 1967 s 3(4); and PARA 38; the Plant Health Act 1967 s 1(2)(a); and PARA 62.

Halsbury's Laws of England/FORESTRY (VOLUME 52 (2009) 5TH EDITION)/2. TIMBER AND TREES/(1) IN GENERAL/55. Property in trees.

55. Property in trees.

In property the subject of a lease for a term of years, timber trees are the property of the landlord, in the absence of agreement to the contrary, and even if included in the demise may only be felled for repairs and fuel¹. A tree partly on the land of one person and partly on that of another, so that the roots derive nourishment from the soil of both, belongs to the owner of the soil where it was first sown or planted². To cut or top timber trees or to do anything that may cause decay is waste³.

If trees, being timber, are blown down, they belong to the landlord; but if they are dotards they belong to the tenant⁴. In the absence of express agreement a landlord cannot, by cutting down dotards, acquire a right to the wood as against the tenant⁵.

Where, however, trees are excepted from a demise, the landlord has an implied right to enter on the land at all reasonable times to saw, and to cut and carry away the trees⁶. The tenant is not liable for injury done to excepted trees by his cattle⁷.

The destruction of germens, or young plants destined to become trees, is waste⁸; but the tenant has a general property in hedges, bushes and trees which are not timber⁹.

If, on a sale of land, the vendor reserves the timber up to an agreed date but, having sawn the timber, fails to remove it by that date, the purchaser nevertheless cannot claim the property in the logs¹⁰.

In a lease of premises in a county where cider is made, an exception and reservation to the landlord of 'all timber trees and other trees, but not the annual fruit thereof', does not except apple and similar fruit trees¹¹.

A covenant 'not to remove or grub up or destroy' trees is broken by removing trees from one part of the premises to another, or by substituting other trees for those growing on the premises¹², but a tenant may remove from an orchard trees that are decayed and past bearing, and plant others¹³.

Cutting down pollard willows which are of no special service to the land, but leaving the stools or butts from which fresh shoots will grow, is not waste¹⁴.

1 *Doe d Douglas v Lock* (1835) 2 Ad & El 705; and see *Berriman v Peacock* (1832) 9 Bing 384.

2 *Holder v Coates* (1827) Mood & M 112.

3 Co Litt 53a. As to waste by a tenant for life, and the position as between a tenant for life and the remainderman regarding timber on settled property see **SETTLEMENTS** vol 42 (Reissue) PARA 986 et seq.

4 *Herlakenden's Case* (1589) 4 Co Rep 62a; *Countess of Cumberland's Case* (1610) Moore KB 812. 'Dotard' means a tree that has lost its top or branches and is in a state of decay: see the Oxford English Dictionary.

5 *Channon v Patch* (1826) 5 B & C 897.

6 *Liford's Case* (1614) 11 Co Rep 46b at 52a; *Hewitt v Isham* (1851) 7 Exch 77. Cf *Eastern Construction Co Ltd v National Trust Co Ltd and Schmidt* [1914] AC 197, PC. As to the rights which may be exercised by a purchaser of growing timber see *Rudd v Rea* [1921] 1 IR 223; on appeal [1923] 1 IR 55, CA.

7 *Glenham v Hanby* (1699) 1 Ld Raym 739.

8 *Phillipps (Phillips) v Smith* (1845) 14 M & W 589 at 594.

- 9 *Berriman v Peacock* (1832) 9 Bing 384.
- 10 *Ellis v Noakes* [1932] 2 Ch 98n.
- 11 *Bullen v Denning* (1826) 5 B & C 842; Com Dig, Biens, H.
- 12 *Doe d Wetherell v Bird* (1833) 6 C & P 195.
- 13 *Doe d Jones v Crouch* (1810) 2 Camp 449.
- 14 *Phillipps (Phillips) v Smith* (1845) 14 M & W 589 at 594.

Halsbury's Laws of England/FORESTRY (VOLUME 52 (2009) 5TH EDITION)/2. TIMBER AND TREES/(1) IN GENERAL/56. Rural development boards.

56. Rural development boards.

Land in the area of a rural development board¹ may not normally be planted with trees without a licence granted by the board². However, this does not apply:

- 156 (1) to planting by the Forestry Commission³;
- 157 (2) to land which is subject to a forestry dedication covenant⁴ or the subject of an approved woodlands scheme made under the powers contained in the Forestry Act 1967 or any enactment repealed by that Act, so long as the covenant or scheme in question continues in force, without prejudice to the enforceability of any condition contained in a licence granted before it was entered into or took effect⁵;
- 158 (3) to land which is, or at some time in the previous ten years has been, woodland⁶;
- 159 (4) to the planting of land of an area not exceeding 4 hectares, but not so as to permit more than 4 hectares of land in the ownership of any one person or, where two or more agricultural units are in the same ownership, more than 4 hectares in each unit, to be planted in any period of 12 months⁷;
- 160 (5) to the planting of fruit trees or to land forming part of an orchard⁸;
- 161 (6) to land forming part of a public open space⁹, or to land which it is not reasonably practical to put to any beneficial use in its existing state¹⁰;
- 162 (7) to planting as a condition imposed on the granting of planning permission under the Town and Country Planning Act 1990 or as a condition attached to a felling licence granted, or having effect as if granted, under the Forestry Act 1967¹¹; or
- 163 (8) if the order establishing the board so provides, to planting carried on during a period not exceeding three months from the date on which it is established¹².

An application for a licence must be in such form as the board directs, and a licence may be granted with or without conditions¹³. Within two months of the receipt of an application the board must serve on the applicant and all other persons with an estate or interest in the land to which the application relates, other than a minor tenancy¹⁴, notice of the manner in which the application has been dealt with; and, except where its decision is to grant a licence without any conditions other than that of requiring the planting which is authorised to be carried out within five years from the grant of the licence, the notice must give reasons for its decision¹⁵. Within two months of the receipt of such a notice, the applicant and any person other than the applicant who has an estate or interest, other than a minor tenancy, in the land to which the notice relates, may appeal to the Secretary of State or the Welsh Ministers¹⁶ against the decision¹⁷. Before determining the appeal the Secretary of State and the Welsh Ministers must, if either the applicant or the board so desires, afford each of them an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State or the Welsh Ministers for the purpose¹⁸. The Secretary of State and the Welsh Ministers may allow or dismiss the appeal, or vary any part of the board's decision, whether or not the appeal related to it¹⁹; and must serve notice of his or their decision on the interested parties²⁰.

1 As to rural development boards see **AGRICULTURAL LAND** vol 1 (2008) PARAS 659-669. For these purposes land in the area of a rural development board is regarded as having been within that area from the date when the board is established except that, if included by an order varying the board's area, it is regarded as being within that area from the date when that order takes effect: Agriculture Act 1967 s 57(3).

2 Agriculture Act 1967 s 52(1). A person who contravenes s 52(1) or any condition subject to which a licence is granted (see s 52(4); and the text and note 13) is guilty of an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale: s 52(8) (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). As to the standard scale see PARA 32 note 6. Alternatively, or in addition, the court may order the person to take specified steps to remedy the matters relating to the contravention, and if the order is not complied with the offender is liable on summary conviction to a fine not exceeding £10 for each day on which the non-compliance continues: Agriculture Act 1967 s 52(9). Proceedings may be instituted within six months of the first discovery of the offence by the person taking the proceedings; but no proceedings may be instituted more than two years after the date of the offence (s 52(10)) and the court may, on application, enlarge the time specified for taking remedial action (s 52(9)).

3 Agriculture Act 1967 s 52(2)(a). As to the Forestry Commission see PARA 34 et seq.

4 As to forestry dedication covenants see PARAS 116-119.

5 Agriculture Act 1967 s 52(2)(b).

6 Agriculture Act 1967 s 52(2)(c). 'Woodland' includes all land used primarily for the growing of trees: s 57(1).

7 Agriculture Act 1967 s 52(2)(d) (amended by SI 1978/244). The period of 12 months may include a period beginning before the land is within the board's area: Agriculture Act 1967 s 52(14).

8 Agriculture Act 1967 s 52(2)(e).

9 'Public open space' means land laid out as a public garden or used (otherwise than in pursuance of the Law of Property Act 1925 s 193 (see **COMMONS** vol 13 (2009) PARA 581) or the National Parks and Access to the Countryside Act 1949 Pt V (ss 59-83) (see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 581 et seq) or the Countryside and Rights of Way Act 2000 Pt I (ss 1-46) (see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 580 et seq)) for the purpose of public recreation, or land being a disused burial ground: Agriculture Act 1967 s 52(15) (amended by the Countryside and Rights of Way Act 2000 Sch 4 para 3).

10 Agriculture Act 1967 s 52(2)(f).

11 Agriculture Act 1967 s 52(2)(g) (amended by the Planning (Consequential Provisions) Act 1990 Sch 2 para 15(3)).

12 Agriculture Act 1967 s 52(2)(h).

13 Agriculture Act 1967 s 52(3). An application must be sent to the board by registered post or recorded delivery service, or delivered to the secretary or chief officer of the board: s 52(12). The board's powers under these provisions are to be exercised as a means of meeting the problems described in the provisions setting up the boards: s 52(3); and see s 45; and **AGRICULTURAL LAND** vol 1 (2008) PARA 659. The conditions in respect of which the licence may be granted may, in particular: (1) govern the kinds of trees planted (s 52(4)(a)); (2) in relation to short-term crops, require the growing to be discontinued after a specified time and certain works for clearing the land to be carried out (s 52(4)(b)); (3) limit the period of planting (s 52(4)(c)); and (4) require the planting and any fencing to allow access to other land (s 52(4)(d)). The licence must name the person to whom it is granted unless it is indorsed in favour of another person: s 52(5).

14 'Minor tenancy' means a tenancy of less than 12 months: Agriculture Act 1967 s 52(15).

15 Agriculture Act 1967 s 52(6). Where a notice is not received, the applicant may by notice served in the same manner as an application (see note 13) require the board to make good its default; and at the expiration of 14 days from the service of that notice the board must grant a licence to the applicant without any conditions other than a condition requiring the authorised planting to be carried out within five years from that date: s 52(12), (13).

16 The Agriculture Act 1967 ss 52(16), 75(2) provide that the 'appropriate minister' for these purposes means the Minister of Agriculture, Fisheries and Food and the Secretary of State for Wales acting jointly, but this should be read as referring to the Secretary of State for Environment, Food and Rural Affairs, the Secretary of State for Wales and the Welsh Ministers in accordance with the provisions cited in PARA 2.

17 Agriculture Act 1967 s 52(7).

18 Agriculture Act 1967 s 52(7)(a).

19 Agriculture Act 1967 s 52(7)(b).

20 Agriculture Act 1967 s 52(7)(c). Compensation is payable for the Secretary of State or the Welsh Ministers' refusal of consent if loss or damage results: *Currie's Executors v Secretary of State for Scotland* 1992 SLT 69 (Lands Tribunal for Scotland).

Halsbury's Laws of England/FORESTRY (VOLUME 52 (2009) 5TH EDITION)/2. TIMBER AND TREES/(1) IN GENERAL/57. Financial aids.

57. Financial aids.

In England, the Secretary of State¹ may pay financial assistance to a beneficiary² towards expenditure incurred or to be incurred by him in connection with an approved operation³. The Secretary of State may also pay financial assistance⁴ to a training provider⁵ or trainee⁶ towards expenditure incurred or to be incurred by him in connection with an approved project⁷.

1 As to the Secretary of State see PARA 2.

2 'Beneficiary' means a person who has been granted approval for an operation; and 'operation' means an investment, plan, project or action which is the subject of an application made pursuant to the Rural Development Grants (Agriculture and Forestry) Regulations 2000, SI 2000/2907, reg 4: reg 2(1).

3 Rural Development Grants (Agriculture and Forestry) Regulations 2000, SI 2000/2907, regs 1(2), 3. An 'approved operation' is an operation which has been approved by the Secretary of State: reg 2(1).

4 See under the Vocational Training Grants (Agriculture and Forestry) Regulations 2000, SI 2000/3045: see **AGRICULTURAL PRODUCTION AND MARKETING** vol 1 (2008) PARA 814.

5 'Training provider' means a person who has been granted approval by the minister under the Vocational Training Grants (Agriculture and Forestry) Regulations 2000, SI 2000/3045, for a project which concerns the provision of training to others: reg 2(1).

6 'Trainee' means a person who has been granted approval for a project which concerns his training: Vocational Training Grants (Agriculture and Forestry) Regulations 2000, SI 2000/3045, reg 2(1).

7 Vocational Training Grants (Agriculture and Forestry) Regulations 2000, SI 2000/3045, regs 1(2), 3.

Halsbury's Laws of England/FORESTRY (VOLUME 52 (2009) 5TH EDITION)/2. TIMBER AND TREES/(1) IN GENERAL/58. Nuisance and negligence.

58. Nuisance and negligence.

Remedies for nuisance caused to neighbouring property by overhanging branches or spreading roots of trees, and the circumstances in which injury caused by the fall of a tree may give rise to a claim for negligence, are discussed elsewhere in this work¹.

¹ As to nuisance see **BOUNDARIES** vol 4(1) (2002 Reissue) PARA 942 et seq. As to negligence see *Caminer v Northern and London Investment Trust Ltd* [1951] AC 88, [1950] 2 All ER 486, HL; *Salsbury v Woodland* [1970] 1 QB 324, [1969] 3 All ER 863, CA (relating to tree felling); and **NEGLIGENCE** vol 78 (2010) PARA 61. As to trees near highways see the Highways Act 1980 ss 141(1), 142(9), 149, 154; and **HIGHWAYS, STREETS AND BRIDGES** vol 21 (2004 Reissue) PARAS 352, 357, 379, 555. As to the obstruction of electric lines see **FUEL AND ENERGY** vol 19(2) (2007 Reissue) PARA 1295.

Halsbury's Laws of England/FORESTRY (VOLUME 52 (2009) 5TH EDITION)/2. TIMBER AND TREES/(1) IN GENERAL/59. Poisonous trees.

59. Poisonous trees.

A person who allows poisonous trees on his land to overhang a neighbour's land is liable for the injury caused to the neighbour's cattle by their eating the leaves of such trees¹, but the position may be different as between landlord and tenant. A tenant takes the property as he finds it and if, at the time of the demise, the demised land is overhung by poisonous trees growing on land retained by the landlord, the tenant has no right of action for damage suffered if his animals eat the overhanging branches². If the trees do not project over the neighbour's land, even though they come close to the boundary, and the neighbour's cattle reach and eat their leaves and are thereby injured, the owner of the trees is under no liability for the injury unless he is under an obligation to maintain the fence between the properties and fails to do so³. The mere fact that clippings from trees have been placed on a neighbour's land and have thereby injured the neighbour's cattle does not constitute a cause of action against the owner of the trees as such, if the clippings were not placed there by himself or his employees⁴.

1 *Crowhurst v Amersham Burial Board* (1878) 4 ExD 5.

2 *Cheater v Cater* [1918] 1 KB 247, CA, where the trees overhung the land substantially to the same extent and in the same condition at the commencement of the tenancy and at the time the tenant's mare ate the branches.

3 *Ponting v Noakes* [1894] 2 QB 281.

4 *Wilson v Newberry* (1871) LR 7 QB 31.

Halsbury's Laws of England/FORESTRY (VOLUME 52 (2009) 5TH EDITION)/2. TIMBER AND TREES/(1) IN GENERAL/60. Income and corporation tax liability.

60. Income and corporation tax liability.

Profits derived from the occupation of land in the United Kingdom¹ which comprises woodlands or is being prepared for use for forestry purposes are exempt from corporation tax². Further, the commercial occupation of woodlands in the United Kingdom is not a 'trade' or part of a 'trade' for any income tax purpose; and for this purpose the occupation of woodlands is commercial if the woodlands are managed on a commercial basis and with a view to the realisation of profits³.

It has been held that the terms 'woodlands' and 'forestry' are to be treated as synonymous for these purposes. 'Woodlands' connotes a wood, a sizeable area of land to a significant extent covered by growing trees of some maturity, height and size; and while there is no mathematical or scientific formula for deciding the area of land, the density of the trees or maturity, height or size required, it cannot be assumed that land covered with any trees constitutes woodland. A good rule of thumb is whether their wood is capable of being used as timber, for woodlands are frequently used and cultivated for timber⁴.

The following provisions apply for the purpose of calculating the profits of a trade of dealing in land for income tax purposes⁵. If the person carrying on the trade buys woodlands in the United Kingdom in the course of the trade, the part of the cost of the woodlands which is attributable to trees or saleable underwood growing on the land is ignored⁶. If the woodlands are subsequently sold in the course of the trade, and any of the trees or underwood are still growing on the land at the time of the sale, then the part of the price that is equal to the amount previously ignored⁷ for the trees or underwood is ignored⁸. Similar provisions apply in computing for corporation tax purposes the profits of a trade of dealing in land⁹.

1 As to the meaning of 'United Kingdom' see PARA 2 note 2.

2 See the Corporation Tax Act 2009 s 37(1) (in relation to accounting periods ending on or after 1 April 2009); the Income and Corporation Taxes Act 1988 s 53(4) (in relation to accounting periods ending before that date); and **INCOME TAXATION** vol 23(1) (Reissue) PARA 126.

3 Income Tax (Trading and Other Income) Act 2005 s 11(1), (2). When read with s 11, s 267 (activities not for generating income from land) and s 768 secure that profits or losses from the commercial occupation of woodlands in the United Kingdom are ignored for income tax purposes: s 11(3). No liability to income tax arises under Pt 5 Ch 8 (ss 687-689) (income not otherwise charged) in respect of income arising from the commercial occupation of woodlands in the United Kingdom; and for this purpose the occupation of woodlands is commercial if the woodlands are managed on a commercial basis and with a view to the realisation of profits: s 768(1), (2).

4 See *Jaggers (t/a Shide Trees) v Ellis (Inspector of Taxes)* [1997] STC 1417, 71 TC 164 (taxpayer planted and cultivated young coniferous trees on approximately 9 acres of land and sold trees directly to the public as Christmas trees; held that the trees on the site had neither the maturity, height or size a person acquainted with the English language would associate with a wood or woodlands; they resembled bushes rather than timber trees and the general impression of the site was of a nursery rather than a wood; the taxpayer was thus liable to income tax as a farmer).

5 Income Tax (Trading and Other Income) Act 2005 s 156(1).

6 Income Tax (Trading and Other Income) Act 2005 s 156(2).

7 *Ie* under the Income Tax (Trading and Other Income) Act 2005 s 156(2).

8 Income Tax (Trading and Other Income) Act 2005 s 156(3).

9 See the Corporation Tax Act 2009 s 134 (in relation to accounting periods ending on or after 1 April 2009); the Income and Corporation Taxes Act 1988 s 99(1) (in relation to accounting periods ending before that date); and **INCOME TAXATION** vol 23(1) (Reissue) PARA 83.

Halsbury's Laws of England/FORESTRY (VOLUME 52 (2009) 5TH EDITION)/2. TIMBER AND TREES/(1) IN GENERAL/61. Tree preservation orders.

61. Tree preservation orders.

If it appears to a local planning authority¹ to be expedient in the interests of amenity to make provision for the preservation of trees or woodlands in its area, it may make a tree preservation order in respect of trees, groups of trees or woodlands². The Secretary of State and the Welsh Ministers may also make tree preservation orders³. There are penalties for non-compliance with tree preservation orders⁴. These provisions do not, however, have effect in respect of anything done:

164 (1) by or on behalf of the Forestry Commissioners⁵ on land placed at their disposal⁶ or otherwise under their management or supervision⁷;

165 (2) by or on behalf of any other person in accordance with a relevant plan⁸ which is for the time being in force⁹.

1 As to the meaning of 'local planning authority' for these purposes see the Town and Country Planning Act 1990 s 1; and **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 28. For the purposes of planning authorities' duties as to trees, in relation to land in the Norfolk and Suffolk Broads, 'local planning authority' includes the Broads Authority: see s 5(1); and **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 33. As to the Broads Authority see **WATER AND WATERWAYS** vol 101 (2009) PARA 734 et seq.

As to the limited circumstances in which county planning authorities in England may make tree preservation orders see the Town and Country Planning Act 1990 s 1(5)(c), Sch 1 para 13(1); and **TOWN AND COUNTRY PLANNING** vol 46(2) (Reissue) PARA 852.

The functions of a local planning authority by virtue of ss 198-201, 206-209 (tree preservation orders: see **TOWN AND COUNTRY PLANNING** vol 46(2) (Reissue) PARA 850 et seq), so far as they are functions of a National Park authority by virtue of s 4A (see **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 32), are exercisable as respects any area which is or is included in an area for which there is a district council, concurrently with the National Park authority, by that council: see s 4A(4); and **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 32.

2 See the Town and Country Planning Act 1990 s 198(1), (2); and **TOWN AND COUNTRY PLANNING** vol 46(2) (Reissue) PARA 850. See also the Forestry Act 1967 s 35; and PARA 138. At the date at which this volume states the law provision for the making of tree preservation orders and provisional tree preservation orders was contained in the Town and Country Planning Act 1990 ss 199(1), 201(1), (2) (see **TOWN AND COUNTRY PLANNING** vol 46(2) (Reissue) PARA 853); as from a day to be appointed those provisions are repealed by the Planning Act 2008 s 192(1), (3), (4), Sch 13 and new provision in this regard is made by the Town and Country Planning Act 1990 ss 202A-202G (prospectively added by the Planning Act 2008 s 192; amended by SI 2009/1307). The procedure to be followed in making an order continues to be governed by the Town and Country Planning (Trees) Regulations 1999, SI 1999/1892 (see **TOWN AND COUNTRY PLANNING** vol 46(2) (Reissue) PARA 856 et seq).

3 See the Town and Country Planning Act 1990 s 202; and **TOWN AND COUNTRY PLANNING** vol 46(2) (Reissue) PARA 851. At the date at which this volume states the law provision as to compensation in respect of a direction by a local planning authority or the Secretary of State for securing the replanting of any part of a woodland area felled in the course of forestry operations permitted by or under a tree preservation order, and as to compensation in respect of tree preservation orders, was made by the Town and Country Planning Act 1990 ss 203-205 (see **TOWN AND COUNTRY PLANNING** vol 46(2) (Reissue) PARAS 864-867); as from a day to be appointed those provisions are repealed by the Planning Act 2008 s 192(6), Sch 13 and new provision in this regard is made by the Town and Country Planning Act 1990 s 202E (prospectively added by the Planning Act 2008 s 192; amended by SI 2009/1307).

4 See the Town and Country Planning Act 1990 s 210; and **TOWN AND COUNTRY PLANNING** vol 46(2) (Reissue) PARA 876.

5 As to the Forestry Commissioners see PARA 34 et seq.

6 le placed at their disposal in pursuance of the Forestry Act 1967: see the Town and Country Planning Act 1990 s 200(1)(a); and **TOWN AND COUNTRY PLANNING** vol 46(2) (Reissue) PARA 855. For these purposes a

reference to a provision of the Forestry Act 1967 or the Forestry Act 1979 includes a reference to a corresponding provision replaced by that provision or any earlier corresponding provision: see the Town and Country Planning Act 1990 s 200(3); and **TOWN AND COUNTRY PLANNING** vol 46(2) (Reissue) PARA 855.

7 See the Town and Country Planning Act 1990 s 200(1)(a); and **TOWN AND COUNTRY PLANNING** vol 46(2) (Reissue) PARA 855.

8 As to a 'relevant plan' for these purposes see the Town and Country Planning Act 1990 s 200(2); and **TOWN AND COUNTRY PLANNING** vol 46(2) (Reissue) PARA 855.

9 See the Town and Country Planning Act 1990 s 200(1)(b); and **TOWN AND COUNTRY PLANNING** vol 46(2) (Reissue) PARA 855.

Halsbury's Laws of England/FORESTRY (VOLUME 52 (2009) 5TH EDITION)/2. TIMBER AND TREES/(1) IN GENERAL/62. Vermin and pests.

62. Vermin and pests.

If the Forestry Commissioners¹ are satisfied that trees or tree plants are being, or are likely to be, damaged by rabbits, hares or vermin² owing to the failure of an occupier of land³ to destroy them sufficiently on the land or to take other steps for the prevention of such damage, the Commissioners, after giving the occupier and owner a reasonable⁴ opportunity of destroying the rabbits, hares or vermin or of taking steps to prevent the damage, may authorise in writing any competent person to enter on the land and kill and take the rabbits, hares and vermin⁵. The net cost incurred by the Commissioners in connection with the action so taken may be recovered by them summarily as a civil debt from the occupier⁶.

Any person who obstructs an authorised person in exercising his powers and duties under these provisions is guilty of an offence⁷.

The Commissioners also exercise powers relating to destructive insects or pests so far as they relate to insects or pests destructive of forest trees and timber⁸.

1 As to the Forestry Commissioners see PARA 34 et seq.

2 'Vermin' includes squirrels: Forestry Act 1967 s 7(5)(b).

3 The person entitled to kill rabbits, hares or vermin on any common land is deemed the occupier of the land for these purposes: Forestry Act 1967 s 7(5)(a).

4 ie reasonable in the opinion of the Commissioners: Forestry Act 1967 s 7(2).

5 Forestry Act 1967 s 7(1), (2). In addition to the powers of the Commissioners, the Secretary of State and the Welsh Ministers may themselves require the destruction of pests, such as rabbits, for the purpose of preventing damage to, among other things, trees and hedges: see the Agriculture Act 1947 s 98(1), (7); and **AGRICULTURAL PRODUCTION AND MARKETING** vol 1 (2008) PARAS 1021-1022. The Secretary of State and the Welsh Ministers may also by order designate rabbit clearance areas under the Pests Act 1954 s 1 (see **AGRICULTURAL PRODUCTION AND MARKETING** vol 1 (2008) PARA 1023), and local authorities have powers to require action to be taken in certain circumstances for the destruction of rats or mice (see the Prevention of Damage by Pests Act 1949 s 4; and **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 46 (2010) PARA 875). As to the Secretary of State and the Welsh Ministers see PARA 2.

6 Forestry Act 1967 s 7(3). As to the recovery of a civil debt summarily see **MAGISTRATES** vol 29(2) (Reissue) PARA 826.

7 Forestry Act 1967 s 7(4) (amended by virtue of the Criminal Justice Act 1982 s 46). A person found guilty of this offence is liable on summary conviction to a fine not exceeding level 2 on the standard scale: Forestry Act 1967 s 7(4) (as so amended). As to the standard scale see PARA 32 note 6. The person authorised must, if required, produce his authority: Forestry Act 1967 s 7(4). As to procedure on summary trial see **MAGISTRATES** vol 29(2) (Reissue) PARA 681 et seq.

8 Plant Health Act 1967 s 1(2)(a). See also PARA 63 et seq.

Halsbury's Laws of England/FORESTRY (VOLUME 52 (2009) 5TH EDITION)/2. TIMBER AND TREES/(2) PLANT HEALTH AND PLANT AND SEED VARIETIES/(i) Control of Tree Pests/A. IMPORTS FROM THIRD COUNTRIES/63. Prohibitions and restrictions on landing tree pests and relevant material.

(2) PLANT HEALTH AND PLANT AND SEED VARIETIES

(i) Control of Tree Pests

A. IMPORTS FROM THIRD COUNTRIES

63. Prohibitions and restrictions on landing tree pests and relevant material.

The landing in Great Britain¹ of the following tree pests² and relevant material³ is prohibited:

- 166 (1) any tree pest of a specified⁴ description⁵;
- 167 (2) any relevant material of a specified description⁶ carrying or infected with a tree pest of a specified⁷ description⁸;
- 168 (3) any tree pest which, although not specified as described in head (1) or head (2) above, is not normally present in Great Britain and which is likely to be injurious to trees in Great Britain⁹;
- 169 (4) any relevant material of a specified description¹⁰ which originates in a specified¹¹ third country¹² (although this does not apply to any relevant material which is in the course of its consignment¹³ between two third countries under appropriate customs procedures and without any change in customs status and which is transported in such a way as to prevent the accidental escape of tree pests¹⁴);
- 170 (5) any relevant material not prohibited under head (4) above which is of a specified description¹⁵, unless the specified requirements¹⁶ have been complied with¹⁷; and
- 171 (6) any relevant material which is of a specified description¹⁸ and which is not prohibited under head (4) above, unless the specified requirements¹⁹ have been complied with²⁰.

These prohibitions and restrictions, and associated provisions²¹, apply to tree pests and relevant material which are introduced into Great Britain from a third country either directly or via another part of the European Community²², but only apply to EC transit goods²³ in respect of which the Forestry Commissioners²⁴ have agreed with the official body of point of entry²⁵ for those goods to be responsible²⁶ for certain matters²⁷.

The provisions of the Plant Health (Forestry) Order 2005 apply without prejudice to the Customs and Excise Management Act 1979²⁸.

1 'Landed' means introduced into Great Britain by any means and includes 'imported by post', and 'land' and 'landing' are to be construed accordingly: Plant Health (Forestry) Order 2005, SI 2005/2517, art 2(1). As to the meaning of 'Great Britain' see PARA 2 note 2.

2 'Tree pest' means a pathogen, or any living organism, other than a vertebrate animal, in any stage of its existence, which is injurious or likely to be injurious to any tree or wood and includes a culture of such pathogen or organism: Plant Health (Forestry) Order 2005, SI 2005/2517, art 2(1). 'Tree' means a living tree or shrub, or a living part of a tree or shrub, at any stage of growth, and 'living parts' of a tree include: (1) fruit or seed; (2) branches with or without foliage; (3) a tree or shrub that has been cut and which retains any foliage; (4) leaves or foliage; (5) a tree or shrub in tissue culture (ie a tree or shrub growing in a clear liquid or clear solid aseptic

culture medium in a closed transparent container); and (6) bud wood, cuttings or scions: art 2(1). 'Wood', save where expressly provided otherwise, means: (a) any wood which retains part or all of its natural round surface, with or without bark; (b) wood in the form of chips, particles, shavings, sawdust, wood waste or scrap; and (c) whether or not satisfying the requirements of head (a) or head (b), dunnage, or wood packaging material; 'dunnage' means (i) in Sch 4 Pt A and in Sch 8 Pt B item 3(c)(ii), wood used to wedge or support non-wood cargo; and (ii) elsewhere in the Plant Health (Forestry) Order 2005, SI 2005/2517, wood used to wedge or support any cargo; and 'wood packaging material' means wood in the form of packing cases, boxes, crates, drums or similar packings, pallets, pallet collars, box pallets or other load boards in use in the transport of objects of any kind: art 2(1). 'Fruit' means fruit in the botanical sense but does not include dried, dehydrated, lacquered or deep frozen fruit; and 'seed' means seed in the botanical sense other than seed not intended for planting: art 2(1).

3 'Relevant material' means any tree, wood, isolated bark, soil or growing medium: Plant Health (Forestry) Order 2005, SI 2005/2517, art 2(1). 'Isolated bark' means bark which has been removed or become detached from a living, felled or fallen tree or from any part of such tree: art 2(1).

4 In the absence of a description specified in the Plant Health (Forestry) Order 2005, SI 2005/2517, Sch 1 (amended by SI 2006/2696; SI 2008/644), as follows:

20 (1) insects, mites and nematodes:

1. (a) *Acleris* spp (non-European), eg the Blackheaded Budworm
1
2. (b) *Anoplophora glabripennis* (Motschulsky), an Asian Longhorn Beetle
2
3. (c) *Arrhenodes minutus* (Drury), the Oak Timberworm
3
4. (d) *Choristoneura* spp (non-European), eg the Western Spruce Budworm
4
5. (e) *Dryocosmus kuriphilus* Yasumatsu
5
6. (f) *Monochamus* spp (non-European), Sawyer Beetles
6
7. (g) *Pseudopityophthorus minutissimus* (Zimmermann), an Oak Bark Beetle
7
8. (h) *Pseudopityophthorus pruinus* (Eichhoff), an Oak Bark Beetle
8
9. (i) *Scaphoideus luteolus* (Van Duzee), the White-banded Elm Leaf Hopper
9
10. (j) *Thaumetopoea processionea* (L), the Oak Processionary Moth
10
11. (k) *Xiphinema americanum* Cobb *sensu lato* (non-European populations), an American Dagger Nematode
11
12. (l) *Xiphinema californicum* Lamberti and Bleve-Zacheo, an American Dagger Nematode;
12

21 (2) fungi:

13. (a) *Ceratocystis fagacearum* (Bretz) Hunt, the cause of Oak Wilt
13
14. (b) *Chrysomyxa arctostaphyli* Dietl, the cause of Spruce Witches Broom Rust
14
15. (c) *Cronartium* spp (non-European), a cause of Conifer Rust
15
16. (d) *Endocronartium* spp (non-European), a cause of Conifer Rust

- 16
17. (e) *Gibberella circinata* Nirenberg & O'Donnell, the cause of Pitch Canker
17
18. (f) *Guignardia laricina* (Sawada) Yamamoto and Ito, the cause of Shoot Blight of larch
18
19. (g) *Inonotus weirii* (Murrill) Kotlaba and Pouzar, the cause of Poria Root Rot
19
20. (h) *Melampsora farlowii* (Arthur) Davis, the cause of Hemlock Rust
20
21. (i) *Melampsora medusae* Thümen, the cause of Poplar Rust
21
22. (j) *Mycosphaerella larici-leptolepis* Ito et al, the cause of Needle Cast of larch
22
23. (k) *Mycosphaerella populorum* GE Thompson, a cause of Poplar Canker;
23
- 22 (3) viruses and virus-like organisms:
24. (a) Elm phloem necrosis mycoplasma;
24
- 23 (4) parasitic plants:
25. (a) *Arceuthobium* spp (non-European), the dwarf mistletoe.
25
- 5 Plant Health (Forestry) Order 2005, SI 2005/2517, art 5(1)(a).
- 6 le specified in the Plant Health (Forestry) Order 2005, SI 2005/2517, Sch 2 col 2.
- 7 le specified in the Plant Health (Forestry) Order 2005, SI 2005/2517, Sch 2 col 3, opposite the reference to that relevant material.
- 8 Plant Health (Forestry) Order 2005, SI 2005/2517, art 5(1)(b). The specified descriptions of relevant material and tree pests which may not be landed in or moved within Great Britain if that material is carrying or infected with tree pests are as follows (Sch 2 Pt A cols 2, 3), ie in relation to:
- 24 (1) trees, other than fruit or seeds, of *Juniperus* L, originating in any country outside Europe, the tree pest *Aschistonyx eppoi* Inouye;
- 25 (2) trees, other than fruit or seeds, of *Abies* Mill, *Cedrus* Trew, *Larix* Mill, *Picea* A Dietr, *Pinus* L, *Pseudotsuga* Carr or *Tsuga* Carr, or wood of conifers (Coniferales), originating in any country outside Europe, the tree pest *Bursaphelenchus xylophilus* (Steiner and Bührer) Nickle et al, the Pine Wood Nematode;
- 26 (3) trees, other than fruit or seeds, of *Juniperus* L, originating in any country outside Europe, the tree pest *Oligonychus perditus* Pritchard and Baker;
- 27 (4) trees, other than fruit or seeds, of conifers (Coniferales); wood of conifers retaining any bark; or isolated bark of conifers, in any case originating in any country outside Europe, the tree pest *Pissodes* spp (non-European), Weevils;
- 28 (5) trees, other than fruit or seeds, of conifers (Coniferales) over 3 metres in height; wood of conifers retaining any bark; or isolated bark of conifers, in any case originating in any country outside Europe, the tree pest *Scolytidae* spp (non-European), Bark Beetles;
- 29 (6) trees, other than fruit or seeds, of *Pinus* L; or wood or isolated bark of *Pinus* L, the tree pest *Atropellis* spp, the cause of Atropellis Canker of pine;
- 30 (7) trees, other than fruit or seeds, of *Acer saccharum* Marsh; or wood of *Acer saccharum* Marsh, including wood which has not kept its natural round surface, in any case originating in the USA or Canada, the tree pest *Ceratocystis virescens* (Davidson) Moreau, the cause of Sapstreak of maple;

- 31 (8) trees, other than fruit or seeds, of *Pinus* L; or wood of *Pinus* L, the tree pest *Cercoseptoria pini-densiflorae* (Hori and Nambu) Deighton, a cause of Needle Blight of pine;
- 32 (9) trees, other than fruit or seeds, of *Pinus* L, the tree pest *Scirrhia acicola* (Dearn) Siggers, the cause of Brown Spot Needle Blight of pine;
- 33 (10) trees, other than seeds, of *Platanus* L, intended for planting; or wood of *Platanus* L, including wood which has not kept its natural round surface, the tree pest *Ceratocystis fimbriata* f sp *platani* Walter, the cause of Canker Stain of plane;
- 34 (11) trees, other than seeds, of *Castanea* Mill or *Quercus* L, intended for planting, the tree pest *Cryphonectria parasitica* (Murrill) Barr, the cause of Sweet Chestnut Blight;
- 35 (12) trees, other than seeds, of *Pinus* L, intended for planting, the tree pest *Scirrhia pini* Funk and Parker, a cause of Needle Blight of pine.

The specified descriptions of relevant material and tree pests which may not be landed in or moved within Great Britain (as a protected zone) if that material is carrying or infected with tree pests are as follows (Sch 2 Pt B cols 3, 4), ie in relation to:

- 36 (a) trees, other than fruit or seeds, of *Abies* Mill, *Larix* Mill, *Picea* A Dietr or *Pinus* L, over 3 metres in height; wood of conifers (*Coniferales*) retaining any bark; or isolated bark of conifers, the tree pests *Ips amitinus* (Eichoff), the Smaller Eight-toothed Spruce Bark Beetle and *Ips duplicatus* (Sahlberg), the Northern Spruce Bark Beetle;
- 37 (b) trees, other than fruit or seeds, of *Abies* Mill, *Larix* Mill, *Picea* A Dietr, *Pinus* L or *Pseudotsuga* Carr, over 3 metres in height; wood of conifers (*Coniferales*) retaining any bark; or isolated bark of conifers, the tree pest *Ips typographus* (Heer), the Larger Eight-toothed Spruce Bark Beetle;
- 38 (c) wood, other than wood which is bark-free, of *Castanea* Mill, or isolated bark of *Castanea* Mill, the tree pest *Cryphonectria parasitica* (Murrill) Barr, the cause of Sweet Chestnut Blight.

'Europe' includes Belarus, the Canary Islands, Georgia, Kazakhstan (except the area east of the Ural river), Russia (except the regions of Tyumen, Chelyabinsk, Irkutsk, Kemerovo, Kurgan, Novosibirsk, Omsk, Sverdlovsk, Tomsk, Chita, Kamchatka, Magadan, Amur and Skhali, the territories of Krasnoyarsk, Altay, Khabarovsk and Primarie, and the republics of Sakha, Tuva and Buryatia), Ukraine and Turkey (except the area east of the Bosphorus Strait known as Anatolia) (art 2(1) (definition substituted by SI 2006/2696)); and 'USA' means the United States of America except the state of Hawaii: Plant Health (Forestry) Order 2005, SI 2005/2517, art 2(1). 'Bark-free' means wood from which all bark, excluding the vascular cambium, ingrown bark around knots and bark pockets between rings of annual growth, has been removed: art 2(1).

9 Plant Health (Forestry) Order 2005, SI 2005/2517, art 5(1)(c).

10 ie of a description specified in the Plant Health (Forestry) Order 2005, SI 2005/2517, Sch 3 col 2.

11 ie specified in the Plant Health (Forestry) Order 2005, SI 2005/2517, Sch 3 col 3 opposite the reference to that relevant material.

12 Plant Health (Forestry) Order 2005, SI 2005/2517, art 5(1)(d). 'Third country' means a country or territory other than one within the European Community; and 'European Community' means the territories of the member states including the Isle of Man and the Channel Islands but excluding the Canary Islands, Ceuta, Melilla and the French Overseas Departments: art 2(1). Any reference in the Plant Health (Forestry) Order 2005, SI 2005/2517, to the European Community, to a member state or a third country includes a reference to a state, country, principality, province or region within the European Community, member state, or third country, as the case may be: art 2(3). The specified descriptions of relevant material and third countries are as follows (Sch 3 cols 2, 3), ie in relation to:

- 39 (1) trees, other than fruit or seeds, of *Abies* Mill, *Cedrus* Trew, *Chamaecyparis* Spach, *Juniperus* L, *Larix* Mill, *Picea* A Dietr, *Pinus* L, *Pseudotsuga* Carr or *Tsuga* Carr, any country outside Europe;
- 40 (2) trees with leaves, other than fruit or seeds, of *Castanea* Mill or *Quercus* L, any country outside Europe;
- 41 (3) trees with leaves, other than fruit or seeds, of *Populus* L, any country in North America;
- 42 (4) isolated bark of *Castanea* Mill, any third country other than Switzerland;

- 43 (5) isolated bark of *Quercus* L, other than *Quercus suber* L, any country in North America;
- 44 (6) isolated bark of *Acer saccharum* Marsh, any country in North America;
- 45 (7) isolated bark of *Populus* L, any country in the American continent;
- 46 (8) soil or growing medium, which consists in whole or in part of soil or solid organic substances such as parts of plants, humus including peat or bark, other than that composed entirely of peat, Belarus, Moldova, Russia, Turkey, Ukraine, and any country outside Europe, other than Egypt, Israel, Libya, Morocco or Tunisia.

'North America' means the geographical area comprising Canada, Mexico and the USA: art 2(1).

13 'Consignment' has the same meaning as in EC Council Directive 2000/29 (OJ L169, 10.7.2000, p 1) on protective measures against the introduction into the Community of organisms harmful to plants or plant products and against their spread within the Community, art 2(1)(p) where that term is used in the Plant Health (Forestry) Order 2005, SI 2005/2517, Pt 2 (arts 3-17) or in relation to any relevant material referred to in Pt 2 (ie a quantity of goods being covered by a single document required for customs formalities or for other formalities, such as a single phytosanitary certificate or a single alternative document or mark; and a consignment may be composed of one or more lots): art 2(1). 'Phytosanitary certificate' means a certificate which complies with the relevant requirements of arts 7 and 15 (see PARAS 66-67); 'phytosanitary certificate for re-export' means a certificate which complies with such relevant requirements: art 2(1).

14 Plant Health (Forestry) Order 2005, SI 2005/2517, art 5(2).

15 le of a description specified in the Plant Health (Forestry) Order 2005, SI 2005/2517, Sch 4 Pt A col 2 (amended by SI 2006/2696; SI 2008/644).

16 le the requirements specified in the Plant Health (Forestry) Order 2005, SI 2005/2517, Sch 4 Pt A col 3 (as amended: see note 15) opposite the reference to that relevant material.

17 Plant Health (Forestry) Order 2005, SI 2005/2517, art 5(1)(e). Article 5(1)(e) is subject to art 8 (see PARA 66): art 5(1)(e).

18 le of a description specified in the Plant Health (Forestry) Order 2005, SI 2005/2517, Sch 4 Pt C col 2.

19 le the requirements specified in the Plant Health (Forestry) Order 2005, SI 2005/2517, Sch 4 Pt C col 3 opposite the reference to that relevant material.

20 Plant Health (Forestry) Order 2005, SI 2005/2517, art 5(1)(f). The specified descriptions of relevant material and the specified requirements set out in Sch 4 Pt C cols 2, 3. Article 5(1)(e) is subject to art 8 (see PARA 66) and is without prejudice to any requirements specified in Sch 4 Pt A col 3 relating to the relevant material: art 5(1)(f).

21 le the provisions of the Plant Health (Forestry) Order 2005, SI 2005/2517, Pt 2 (arts 3-17): see the text and notes 1-20, 22-27; and PARA 64 et seq.

22 Plant Health (Forestry) Order 2005, SI 2005/2517, art 4(1).

23 'EC transit goods' means any relevant material introduced into Great Britain from a third country via another part of the European Community: Plant Health (Forestry) Order 2005, SI 2005/2517, art 2(1).

24 As to the Forestry Commissioners see PARA 34 et seq.

25 'Official body of point of entry' has the same meaning as in EC Council Directive 2000/29 (OJ L169, 10.7.2000, p 1), art 2(1)(k) (ie the responsible official body in a member state in charge of the point of entry): Plant Health (Forestry) Order 2005, SI 2005/2517, art 2(1). As to the meaning of 'responsible official body' see PARA 65 note 13.

26 le in accordance with the Plant Health (Forestry) Order 2005, SI 2005/2517, art 12(6): see PARA 68 note 5.

27 Plant Health (Forestry) Order 2005, SI 2005/2517, art 4(2).

28 Plant Health (Forestry) Order 2005, SI 2005/2517, art 45.

UPDATE

63 Prohibitions and restrictions on landing tree pests and relevant material

NOTE 12--Head (8). SI 2005/2517 Sch 3 col 3 amended: SI 2009/3020.

NOTE 15--SI 2005/2517 Sch 4 Pt A col 2 further amended: SI 2009/3020.

Halsbury's Laws of England/FORESTRY (VOLUME 52 (2009) 5TH EDITION)/2. TIMBER AND TREES/(2) PLANT HEALTH AND PLANT AND SEED VARIETIES/(i) Control of Tree Pests/A. IMPORTS FROM THIRD COUNTRIES/64. Advance notification of landing of certain relevant material.

64. Advance notification of landing of certain relevant material.

The landing¹ in Great Britain² by any person of specified relevant material³ is prohibited⁴ unless he gives notice in accordance with the following provisions⁵. Such a notice must be in accordance with the prescribed requirements⁶ and must be given⁷ in time to arrive at the office of the Forestry Commissioners⁸:

- 172 (1) in the case of any relevant material brought by air, at least four working hours⁹; and
- 173 (2) in any other case, at least three working days¹⁰,

before the relevant material is landed¹¹. Where, however, a person who is so required to give notice of the landing of any relevant material can reasonably show that he was unable to comply with the periods specified in head (1) or head (2) above because he was unaware that the material had been consigned, he must give notice as soon as is reasonably practicable¹².

The address to which a notice is to be given is such address as the Commissioners must specify from time to time, which may include an address for electronic communications¹³.

1 As to the meaning of 'landing' see PARA 63 note 1.

2 As to the meaning of 'Great Britain' see PARA 2 note 2.

3 I.e. relevant material to which the Plant Health (Forestry) Order 2005, SI 2005/2517, art 6(2) refers. As to the meaning of 'relevant material' see PARA 63 note 3. The prohibition on landing relevant material in art 6(1) applies to the landing in Great Britain, where Great Britain is the point of entry of the material into the Community, of the following relevant material: (1) any relevant material specified in Sch 5 Pt A (amended by SI 2008/644) (Plant Health (Forestry) Order 2005, SI 2005/2517, art 6(2)(a)); or any relevant material specified in Sch 5 Pt B and which is listed in Sch 4 Pt C col 1, in EC Council Directive 2000/29 (OJ L169, 10.7.2000, p 1) Annex II Pt B col 2 and in the course of its consignment to a protected zone listed in Annex II Pt B col 4 opposite the reference to that relevant material, or listed in Annex IV Pt B col 1 and in the course of its consignment to a protected zone listed in Annex IV Pt B col 3 opposite the reference to the relevant material (Plant Health (Forestry) Order 2005, SI 2005/2517, art 6(2)(b)).

A fee is payable to the Commissioners in respect of plant health, documentary and identity checks on certain consignments of relevant material: see PARA 68 note 5.

4 I.e. subject to the Plant Health (Forestry) Order 2005, SI 2005/2517, art 29(3): see PARA 81.

5 Plant Health (Forestry) Order 2005, SI 2005/2517, art 6(1). Contravention of art 6(1) is an offence: see PARA 94.

6 I.e. the requirements of the Plant Health (Forestry) Order 2005, SI 2005/2517, Sch 12: art 6(3)(a). The notice of landing required under art 6(1) must be in the form set out in Sch 12 Pt B or in a document containing at least the information referred to in that form; and the information contained in the notice must be in English, and in typescript or block capitals: see Sch 12 Pt A.

7 I.e. subject to the Plant Health (Forestry) Order 2005, SI 2005/2517, art 6(5) (see the text and note 12).

8 As to the Forestry Commissioners see PARA 34 et seq.

9 Plant Health (Forestry) Order 2005, SI 2005/2517, art 6(3)(b)(i). 'Working hour' means a period of one hour during a working day: art 3.

10 Plant Health (Forestry) Order 2005, SI 2005/2517, art 6(3)(b)(ii). 'Working day', in relation to the notice requirements in art 6(3)(b)(ii) and art 16(3) (see PARA 70) and the period for which material may be detained under art 14(1) (see PARA 69), means a period of 24 hours which is not a Saturday, Sunday, Christmas Day, Good Friday or a bank holiday under the Banking and Financial Dealings Act 1971 (see **TIME** vol 97 (2010) PARA 321) in the part of Great Britain where the notice is given or the material is detained: Plant Health (Forestry) Order 2005, SI 2005/2517, art 3.

11 Plant Health (Forestry) Order 2005, SI 2005/2517, art 6(3).

12 Plant Health (Forestry) Order 2005, SI 2005/2517, art 6(5).

13 Plant Health (Forestry) Order 2005, SI 2005/2517, art 6(4). As to the meaning of 'electronic communication' see the Electronic Communications Act 2000 s 15(1); and **TELECOMMUNICATIONS AND BROADCASTING** vol 45(1) (2005 Reissue) PARA 616 (definition applied by the Plant Health (Forestry) Order 2005, SI 2005/2517, art 3).

Halsbury's Laws of England/FORESTRY (VOLUME 52 (2009) 5TH EDITION)/2. TIMBER AND TREES/(2) PLANT HEALTH AND PLANT AND SEED VARIETIES/(i) Control of Tree Pests/A. IMPORTS FROM THIRD COUNTRIES/65. Requirements for certificates.

65. Requirements for certificates.

Subject to the prescribed exceptions¹, the landing² in Great Britain³ of any specified relevant material⁴ is prohibited unless that relevant material is accompanied by a phytosanitary certificate⁵ issued in the country in which that material originates or in the country from which it was consigned and, where required⁶, by a phytosanitary certificate for re-export⁷. Provided, however, the relevant material is transported in such a way as to prevent the accidental escape of tree pests⁸ and does not undergo any change in its customs status, the above prohibition does not apply to:

- 174 (1) relevant material landed in Great Britain which, under appropriate customs procedures, is in the course of its consignment between two third countries⁹; or
- 175 (2) relevant material landed in Great Britain which has been consigned to Great Britain from another part of the European Community¹⁰ via a third country¹¹.

Where relevant material consigned to Great Britain via any third country by way of transit has been split up, combined with other consignments¹² or repackaged, that material must be accompanied by a phytosanitary certificate for re-export issued in the country of transit¹³.

Where relevant material consigned to Great Britain via any third country by way of transit has or may have been exposed to infection or contamination by any tree pest, no longer remains the same material specified in the phytosanitary certificate which accompanies it or has been processed so as to change its nature, the phytosanitary certificate required to accompany it must be issued in the country of transit¹⁴.

Where relevant material is listed in the specified provision of the relevant European Directive¹⁵ and the specified requirement or requirements¹⁶ can only be fulfilled in the country in which the relevant material originates, the phytosanitary certificate required to accompany it must be issued in that country¹⁷.

Relevant material may be accompanied by an industry certificate¹⁸ instead of a phytosanitary certificate where authorised¹⁹ by certain European Commission Decisions²⁰.

1 le subject to the Plant Health (Forestry) Order 2005, SI 2005/2517, art 8 (see PARA 66) and art 29(2) (see PARA 81) and to art 7(6), (7) (see the text and notes 8-11, 18-20).

2 As to the meaning of 'landing' see PARA 63 note 1.

3 As to the meaning of 'Great Britain' see PARA 2 note 2.

4 le any relevant material referred to in the Plant Health (Forestry) Order 2005, SI 2005/2517, art 6(2)(a) or (b): see PARA 64. As to the meaning of 'relevant material' see PARA 63 note 3.

5 As to the meaning of 'phytosanitary certificate' see PARA 63 note 13.

6 le where the Plant Health (Forestry) Order 2005, SI 2005/2517, art 7(2) applies: see the text and notes 12-13.

7 Plant Health (Forestry) Order 2005, SI 2005/2517, art 7(1). As to the meaning of 'phytosanitary certificate for re-export' see PARA 63 note 13.

8 As to the meaning of 'tree pest' see PARA 63 note 2.

9 Plant Health (Forestry) Order 2005, SI 2005/2517, art 7(6)(a). As to the meaning of 'third country' see PARA 63 note 12.

10 As to the meaning of 'European Community' for these purposes see PARA 63 note 12.

11 Plant Health (Forestry) Order 2005, SI 2005/2517, art 7(6)(b).

12 As to the meaning of 'consignment' see PARA 63 note 13.

13 Plant Health (Forestry) Order 2005, SI 2005/2517, art 7(2). Where a phytosanitary certificate is so required to be accompanied by a phytosanitary certificate for re-export, it may consist of a copy of the certificate certified as a true copy of the original by an authorised officer but in all other cases must be the original certificate: art 7(5). 'Authorised officer' means: (1) an authorised representative of the responsible official body of the country in which a plant passport is issued, a public servant acting under the authority of such a representative or a qualified agent employed by the responsible official body, in any case who must be appropriately qualified; (2) a person permitted by Swiss legislation to issue a Swiss plant passport; or (3) an authorised representative of the responsible official body or the national plant protection organisation of the country in which a phytosanitary certificate or phytosanitary certificate for re-export or translation of a phytosanitary certificate or a phytosanitary certificate for re-export is issued, or a public officer acting under the authority of such a representative: art 2(1). 'Responsible official body' means either the body described in EC Council Directive 2000/29 (OJ L169, 10.7.2000, p 1), art 2(1)(g)(i) or the body described in art 2(1)(g)(ii) (ie the official plant protection organisation(s) of a member state referred to in art 1(4) or any state authority established at national level, or under the supervision, within the limits set by the constitution of the member state concerned, of national authorities at regional level): Plant Health (Forestry) Order 2005, SI 2005/2517, art 2(1). 'Plant passport' means a label and, where appropriate, an accompanying document that meets the relevant requirements set out in Sch 9, issued by or with the authority of the responsible official body for the member state in which the plant passport is issued, and includes a replacement plant passport; and 'Swiss plant passport' means a label and, where appropriate, an accompanying document, issued in Switzerland in accordance with Swiss legislation, which contains information which gives evidence that the legislation in Switzerland relating to plant health standards and special requirements for relevant material moving into and within Switzerland have been complied with, and which relates to relevant material listed in Sch 8 Pt A (see PARA 81): art 2(1). 'National plant protection organisation' means the service established by the government of a third country to discharge the functions specified in the International Plant Protection Convention 1951 (the 'IPPC') art IV(1)(a), details of which have been notified, in the case of contracting parties to the IPPC, to the Director of the Food and Agriculture Organisation of the United Nations, and in all other cases, to the European Commission: Plant Health (Forestry) Order 2005, SI 2005/2517, art 2(1).

The prescribed requirements for plant passports are as follows (art 2(1), Sch 9):

- 47 (a) a plant passport may only be issued in respect of relevant material that has been the subject of a satisfactory inspection at its place of production;
 - 48 (b) a plant passport must comprise either an official label or an official label together with a document of a kind normally used for trade purposes, containing the information specified in head (d) or, as the case may be, head (e); and references to an official label are references to a label which has not been previously used and is made of a material suitable for its purpose, and, in the case of an adhesive label, is in a form approved for use as an official label by the Forestry Commissioners, for plant passports issued in Great Britain, or by the authority with responsibility for such authorisation for plant passports issued in other member states;
 - 49 (c) the information contained in a plant passport must be given in at least one of the official languages of the European Community, and printed, except where it would not reasonably be practicable to do so; where the information is printed, it must be printed in block capitals and where it is not printed, it must be given in typescript or written in block capitals;
 - 50 (d) where a plant passport comprises only an official label, it must contain the following information (ie the information specified in Sch 9 para 7):
- 26. (i) the title 'EC-plant passport';
26
 - 27. (ii) the code for the member state in which the plant passport was issued;
27
 - 28. (iii) the name or code of the responsible official body of the member state in which the plant passport was issued;
28

29. (iv) the registration number of the producer, importer or other person who is authorised to issue the plant passport or to whom the plant passport is issued;
29
 30. (v) the week number of the date when the plant passport is attached to material, or a serial or batch number identifying that material;
30
 31. (vi) the botanical name in Latin of the material to which the plant passport relates;
31
 32. (vii) the quantity of the material to which the plant passport relates (number of trees, volume or weight of wood or isolated bark, etc);
32
 33. (viii) where the relevant material fulfils the requirements for a protected zone, the marking 'ZP' and the code for the protected zone;
33
 34. (ix) in the case of a replacement plant passport, the marking 'RP' and where appropriate the registration number of the producer or importer who was authorised to issue the original plant passport or to whom the original plant passport was issued; and
34
 35. (x) in the case of material originating in a third country, the name of the country of origin of the material or (if appropriate) the country from which the material was consigned to Great Britain;
35
- 51 (e) where the plant passport comprises an official label and an additional document, the official label must contain at least the information specified in head (d)(i)-(v), and the additional document must contain all the information specified in head (d)(i)-(x).

'Official label' means a label that meets the relevant requirements set out in Sch 9, issued by or with the authority of the responsible official body for the member state in which the official label is issued; 'place of production' means any premises, normally worked as a unit, together with any contiguous land in the same ownership or occupation as such premises; and 'premises' includes any land, building, vehicle, vessel, aircraft, hovercraft, freight container or railway wagon: art 2(1).

14 Plant Health (Forestry) Order 2005, SI 2005/2517, art 7(3).

15 Ie listed in EC Council Directive 2000/29 (OJ L169, 10.7.2000, p 1) Annex IV Pt B col 1.

16 Ie the requirement or requirements specified in EC Council Directive 2000/29 (OJ L169, 10.7.2000, p 1) Annex IV Pt B col 2 opposite the reference to that relevant material.

17 Plant Health (Forestry) Order 2005, SI 2005/2517, art 7(4).

18 'Industry certificate' means a certificate authorised by a decision referred to in the Plant Health (Forestry) Order 2005, SI 2005/2517, art 7(7) (see the text and notes 19-20) and which complies with the requirements of art 15(3) (see PARA 67): art 3.

19 Ie authorised by (1) EEC Commission Decision 93/359 (OJ L148, 19.6.93, p 41); (2) EEC Commission Decision 93/360 (OJ L148, 19.6.93, p 45); (3) EEC Commission Decision 93/365 (OJ L151, 23.6.93, p 38); (4) EEC Commission Decision 93/422 (OJ L195, 4.8.93, p 51); (5) EEC Commission Decision 93/423 (OJ L195, 4.8.93, p 5); or (6) EC Commission Decision 2004/95 (OJ L28, 31.1.2004, p 22).

20 Plant Health (Forestry) Order 2005, SI 2005/2517, art 7(7).

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66. Exceptions from certain prohibitions and requirements.

The specified prohibitions on landing relevant material¹, the requirement for advance notification² and the requirements for relevant material to be accompanied by a phytosanitary certificate, phytosanitary certificate for re-export or an industry certificate³ do not apply to any trees⁴ or wood⁵ referred to in heads (a) to (e) below, not showing any signs of the presence of any tree pest⁶, landed in Great Britain⁷ in the baggage of a passenger or other traveller and which:

- 176 (1) are not intended for use in the course of a trade or business⁸;
- 177 (2) are intended for household use⁹; and
- 178 (3) have been grown in and consigned to Great Britain from the Euro-Mediterranean area¹⁰.

The trees or wood referred to are those which are in one of the following categories, not exceeding the stated quantities:

- 179 (a) parts of trees, including dried cones, leaves and branches, for decoration or which together form a single wreath¹¹;
- 180 (b) one cut coniferous tree less than 3 metres in height¹²;
- 181 (c) seeds of *Castanea* (chestnuts), intended for human consumption, not exceeding 2 kilograms in weight¹³;
- 182 (d) tree seedlings, except in bonsai form, not exceeding five in number¹⁴; or
- 183 (e) pieces of wood, which are bark-free¹⁵, not exceeding 1 metre in length and not exceeding five in number¹⁶.

1 le the prohibitions in the Plant Health (Forestry) Order 2005, SI 2005/2517, art 5(1)(e), (f): see PARA 63. As to the meanings of 'landing' and 'relevant material' see PARA 63 notes 1, 3.

2 le the requirement in the Plant Health (Forestry) Order 2005, SI 2005/2517, art 6(1): see PARA 64.

3 le the requirements of the Plant Health (Forestry) Order 2005, SI 2005/2517, art 7: see PARA 65. As to the meanings of 'phytosanitary certificate' and 'phytosanitary certificate for re-export' see PARA 63 note 13; and as to the meaning of 'industry certificate' see PARA 65 note 18.

4 As to the meaning of 'tree' see PARA 63 note 2.

5 As to the meaning of 'wood' see PARA 63 note 2.

6 As to the meaning of 'tree pest' see PARA 63 note 2.

7 As to the meaning of 'Great Britain' see PARA 2 note 2.

8 Plant Health (Forestry) Order 2005, SI 2005/2517, art 8(1)(a).

9 Plant Health (Forestry) Order 2005, SI 2005/2517, art 8(1)(b).

10 Plant Health (Forestry) Order 2005, SI 2005/2517, art 8(1)(c). 'Euro-Mediterranean area' means the geographical area comprising Europe, Algeria, Egypt, Israel, Jordan, Lebanon, Libya, Morocco, Syria, Tunisia and the area of Turkey east of the Bosphorus Strait known as Anatolia: art 2(1).

11 Plant Health (Forestry) Order 2005, SI 2005/2517, art 8(2)(a).

- 12 Plant Health (Forestry) Order 2005, SI 2005/2517, art 8(2)(b).
- 13 Plant Health (Forestry) Order 2005, SI 2005/2517, art 8(2)(c).
- 14 Plant Health (Forestry) Order 2005, SI 2005/2517, art 8(2)(d).
- 15 As to the meaning of 'bark-free' see PARA 63 note 8.
- 16 Plant Health (Forestry) Order 2005, SI 2005/2517, art 8(2)(e).

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67. Presentation and display of documents.

Except in the case of consignments¹ imported into Great Britain² by post³, any phytosanitary certificate⁴, phytosanitary certificate for re-export⁵ or industry certificate⁶ required⁷ to accompany relevant material⁸ must be delivered by the importer⁹ of that relevant material, within three days of its landing, to an inspector¹⁰. In the case of a consignment imported into Great Britain by post, any phytosanitary certificate, phytosanitary certificate for re-export or industry certificate required¹¹ to accompany that material must be affixed to the outside of the package comprising the relevant material or, if the consignment of relevant material consists of more than one package, be affixed to the outside of one of the packages and copies of the certificate must be affixed to the outside of each of the remaining packages¹².

Importers must¹³ include in a customs document relating to each consignment of specified relevant material¹⁴:

- 184 (1) a statement that 'this consignment contains produce of phytosanitary relevance'¹⁵;
- 185 (2) the reference number of any phytosanitary certificate, phytosanitary certificate for re-export or industry certificate required¹⁶ to accompany the relevant material¹⁷; and
- 186 (3) the registration number of the importer of the relevant material¹⁸.

A phytosanitary certificate or phytosanitary certificate for re-export must be completed by an authorised officer¹⁹ in accordance with the relevant requirements²⁰. It must:

- 187 (a) be issued by the responsible official body²¹ or the national plant protection organisation²² of the country of export or²³ re-export²⁴;
- 188 (b) be issued in one of the official languages of the European Community²⁵;
- 189 (c) where it is issued in a language other than English, incorporate or be accompanied by a translation into the English language which, if the translation is a document separate from the certificate, must be completed and signed by an authorised officer²⁶;
- 190 (d) be addressed to the 'Plant Protection Organisations of the Member States of the European Community'²⁷; and
- 191 (e) be completed in typescript or block capitals²⁸.

A phytosanitary certificate or a phytosanitary certificate for re-export must be based on an inspection carried out not more than 14 days before the date of dispatch of the relevant material to which the certificate relates²⁹ and must be completed not more than 14 days before the date of the dispatch of the consignment of relevant material which it is to accompany³⁰.

An industry certificate must be completed in accordance with the requirements of the European Commission Decision³¹ under which that certificate is authorised³².

1 As to the meaning of 'consignment' see PARA 63 note 13.

2 As to the meaning of 'Great Britain' see PARA 2 note 2.

- 3 le consignments referred to in the Plant Health (Forestry) Order 2005, SI 2005/2517, art 9(3): see the text and notes 11-12.
- 4 As to the meaning of 'phytosanitary certificate' see PARA 63 note 13.
- 5 As to the meaning of 'phytosanitary certificate for re-export' see PARA 63 note 13.
- 6 As to the meaning of 'industry certificate' see PARA 65 note 18.
- 7 le required under the Plant Health (Forestry) Order 2005, SI 2005/2517, art 7: see PARA 65.
- 8 As to the meaning of 'relevant material' see PARA 63 note 3.
- 9 'Importer', in relation to any tree pest or relevant material at any time between their landing from a third country and the time when they are discharged by an inspector under the Plant Health (Forestry) Order 2005, SI 2005/2517, includes any owner or other person for the time being possessed of or beneficially interested in the tree pest or relevant material; and 'inspector' means any person authorised by the Forestry Commissioners to be an inspector for these purposes: art 2(1). As to the meaning of 'tree pest' see PARA 63 note 2; as to the meaning of 'landing' see PARA 63 note 1; and as to the meaning of 'third country' see PARA 63 note 12. As to the Forestry Commissioners see PARA 34 et seq.
- 10 Plant Health (Forestry) Order 2005, SI 2005/2517, art 9(1). Contravention of art 9(1) is an offence: see PARA 94.
- 11 See note 7.
- 12 Plant Health (Forestry) Order 2005, SI 2005/2517, art 9(3). Contravention of art 9(3) is an offence: see PARA 94.
- 13 le subject to the Plant Health (Forestry) Order 2005, SI 2005/2517, art 29(4): see PARA 81.
- 14 le each consignment of relevant material referred to in the Plant Health (Forestry) Order 2005, SI 2005/2517, art 6(2)(a) or (b): see PARA 64. 'Customs document' means a document required by the Commissioners for Her Majesty's Revenue and Customs for placing relevant material under one of the procedures specified in EEC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) establishing the Community Customs Code, art 4(16)(a) and (d)-(g): Plant Health (Forestry) Order 2005, SI 2005/2517, art 3.
- 15 Plant Health (Forestry) Order 2005, SI 2005/2517, art 9(2)(a). Contravention of art 9(2) is an offence: see PARA 94.
- 16 See note 7.
- 17 Plant Health (Forestry) Order 2005, SI 2005/2517, art 9(2)(b). See note 15.
- 18 Plant Health (Forestry) Order 2005, SI 2005/2517, art 9(2)(c). See note 15.
- 19 As to the meaning of 'authorised officer' see PARA 65 note 13.
- 20 Plant Health (Forestry) Order 2005, SI 2005/2517, art 15(1). Until 31 December 2009, the certificate must: (1) where it is issued by a contracting party to the International Plant Protection Convention 1951, be in the form set out in either the Plant Health (Forestry) Order 2005, SI 2005/2517, Sch 10 Pt A or Pt B or Sch 11 Pt A or Pt B; and (2) in any other case, be in the form set out in Sch 10 Pt A or Pt B: art 15(1)(a). On and after 1 January 2010, it must be in the form set out in Sch 11 Pt A or Pt B: art 15(1)(b). A phytosanitary certificate or phytosanitary certificate for re-export issued in respect of any relevant material of a description specified in Sch 4 Pt A col 2 (see PARA 63) or Sch 4 Pt C col 2 (see PARA 63) in which one or more alternative requirement is specified in Sch 4 Pt A col 3 or Sch 4 Pt C col 3, respectively, opposite the reference to that relevant material, must specify under the heading 'Additional declaration' the requirement that has been complied with by reference to the relevant position in EC Council Directive 2000/29 (OJ L169, 10.7.2000, p 1) Annex IV Pt A s I or Annex IV Pt B, respectively: Plant Health (Forestry) Order 2005, SI 2005/2517, art 15(4).
- 21 As to the meaning of 'responsible official body' see PARA 65 note 13.
- 22 As to the meaning of 'national plant protection organisation' see PARA 65 note 13.
- 23 le in accordance with the provisions of the International Plant Protection Convention 1951 art V(1).
- 24 Plant Health (Forestry) Order 2005, SI 2005/2517, art 15(3)(a).

25 Plant Health (Forestry) Order 2005, SI 2005/2517, art 15(3)(b). As to the meaning of 'European Community' for these purposes see PARA 63 note 12.

26 Plant Health (Forestry) Order 2005, SI 2005/2517, art 15(3)(c).

27 Plant Health (Forestry) Order 2005, SI 2005/2517, art 15(3)(d).

28 Plant Health (Forestry) Order 2005, SI 2005/2517, art 15(3)(e).

29 Plant Health (Forestry) Order 2005, SI 2005/2517, art 15(5).

30 Plant Health (Forestry) Order 2005, SI 2005/2517, art 15(6).

31 Ie the Decision referred to in the Plant Health (Forestry) Order 2005, SI 2005/251, art 7(7): see PARA 65.

32 Plant Health (Forestry) Order 2005, SI 2005/2517, art 15(2).

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68. Prohibition on removal of relevant material from an area of plant health control and exceptions to prohibition.

Subject to certain exceptions¹, no person may remove or cause to be removed from an area of plant health control² any specified relevant material³ unless an inspector⁴ has discharged⁵ that relevant material or the removal of that relevant material is permitted under the regulations⁶ for measures to control the landing of relevant material and prevent the spread of tree pests⁷. Pending its removal from an area of plant health control, other than at an approved place of inspection, the importer⁸ of relevant material must store it under the supervision of an inspector under such conditions as the inspector may direct and the importer is liable for the costs of such storage⁹.

The prohibition so imposed on the removal of relevant material from an area of plant health control unless it has been discharged by an inspector does not, however, apply to:

- 192 (1) any relevant material which is in the course of its consignment between two third countries¹⁰ under appropriate customs procedures and without any change in its customs status and which is transported in such a way as to prevent the accidental escape of tree pests¹¹;
- 193 (2) any trees or wood excepted¹² from the requirements for certificates¹³; or
- 194 (3) any relevant material which is consigned to Great Britain from another part of the European Community via a third country without any change in its customs status and which is transported in such a way as to prevent the accidental escape of tree pests¹⁴.

1 le subject to the Plant Health (Forestry) Order 2005, SI 2005/2517, art 11 (see heads (1)-(3) in the text) and art 29(3) (see PARA 81).

2 An 'area of plant health control' is: (1) the point of entry specified in the Plant Health (Forestry) Order 2005, SI 2005/2517, art 10(3) where relevant material is landed in Great Britain for the first time; (2) a place close to the point of entry specified in art 10(3) which has been designated as an area of plant health control by the Forestry Commissioners and by the Commissioners for Her Majesty's Revenue and Customs; or (3) an approved place of inspection: arts 2(1), 10(2). For these purposes, the 'point of entry' is: (a) where the relevant material is transported by air, the airport; (b) where the relevant material is transported by maritime or fluvial transport, the port; and (c) where the relevant material is transported by rail, the rail freight terminal: art 10(3). 'Approved place of inspection' means a place of destination of relevant material approved by the Forestry Commissioners under art 17 (see PARA 70): art 3. As to the meaning of 'relevant material' see PARA 63 note 3; as to the meaning of 'landed' see PARA 63 note 1; as to the meaning of 'Great Britain' see PARA 2 note 2; and as to the Forestry Commissioners see PARA 34 et seq.

3 le any relevant material referred to in the Plant Health (Forestry) Order 2005, SI 2005/2517, art 6(2)(a) or (b): see PARA 64.

4 As to the meaning of 'inspector' see PARA 67 note 9.

5 An inspector may 'discharge' relevant material pursuant to the Plant Health (Forestry) Order 2005, SI 2005/2517, art 10(1) if he is satisfied as to the matters referred to in art 12(2): art 12(1). Subject to art 12(5), (6), an inspector must satisfy himself: (1) that the relevant material is free from any tree pest of a description specified in Sch 1 (see PARA 63 note 4); (2) if listed in Sch 2 col 2 (see PARA 63 note 8), that the relevant material is not carrying or infected with a tree pest of a description specified in Sch 2 col 3 opposite the reference to the relevant material; (3) if listed in EC Council Directive 2000/29 (OJ L169, 10.7.2000, p 1) Annex II Pt B col 2 and in the course of its consignment to a protected zone listed in Annex II Pt B col 4 opposite the reference to the

relevant material, that the relevant material is not carrying or infected with a tree pest of a description specified in Annex II Pt B col 1 opposite the reference to the relevant material; (4) if listed in the Plant Health (Forestry) Order 2005, SI 2005/2517, Sch 4 Pt A col 2 (see PARA 63) or Sch 4 Pt C col 2 (see PARA 63), that the relevant material complies with the requirements specified in Sch 4 Pt A col 3 or Sch 4 Pt C col 3 respectively, opposite the reference to the relevant material and, where there is one or more alternative requirement, the requirement declared in the phytosanitary certificate or phytosanitary certificate for re-export; (5) if listed in EC Council Directive 2000/29 (OJ L169, 10.7.2000, p 1) Annex IV Pt B col 1 and in the course of its consignment to a protected zone listed in Annex IV Pt B col 3 opposite the reference to the relevant material, that the relevant material complies with the requirements specified in Annex IV Pt B col 2 opposite the reference to the relevant material and, where there is one or more alternative requirement, the requirement declared in the phytosanitary certificate or phytosanitary certificate for re-export; (6) that the relevant material corresponds with the description given to it in the phytosanitary certificate, phytosanitary certificate for re-export or industry certificate; and (7) that the relevant material is accompanied by the certificate or certificates required by the Plant Health (Forestry) Order 2005, SI 2005/2517, art 7 (see PARA 65) and, where applicable, by a plant health movement document: art 12(2). 'Plant health movement document' means a document which meets the requirements in Sch 13 (see PARA 70 note 6): art 2(1). As to the meaning of 'tree pest' see PARA 63 note 2; as to the meanings of 'phytosanitary certificate' and 'phytosanitary certificate for re-export' see PARA 63 note 13; and as to the meaning of 'industry certificate' see PARA 65 note 18.

For the purpose of satisfying himself as to any of the matters in heads (1)-(5) an inspector may carry out an examination of a consignment or lot of relevant material and its packaging, including any wood packaging material and, where necessary, the vehicle transporting that consignment or lot either in its entirety or on the basis of one or more representative samples from the consignment or from each lot forming part of the consignment (art 12(3)); and for the purpose of satisfying himself as to the matters in head (6) above, an inspector may carry out an identity check (art 12(4)). 'Lot' has the same meaning as in EC Council Directive 2000/29 (OJ L169, 10.7.2000, p 1) art 2(1)(o) (ie a number of units of a single commodity, identifiable by its homogeneity of composition and origin, and forming part of a consignment) (Plant Health (Forestry) Order 2005, SI 2005/2517, art 2(1)); and 'identity check' means an examination of a consignment of relevant material for the purposes of determining whether it corresponds to its description in the documents that accompany it being an examination of that consignment either in its entirety or on the basis of one or more representative samples from the consignment or from each lot forming part of the consignment (art 3). As to the meaning of 'consignment' see PARA 63 note 13; and as to the meaning of 'wood packaging material' see PARA 63 note 2.

An inspector may, for the purpose of performing a plant health check, require the occupier or other person in charge of the premises in which the check is to take place to provide, where appropriate, suitable areas of inspection, and to provide adequate lighting: art 12(8). 'Plant health check' means an examination carried out under art 12(3): art 2(1). An importer must pay to the Forestry Commissioners a fee in respect of a plant health check, documentary check or identity check carried out on a consignment to which the Plant Health (Fees) (Forestry) Regulations 2006, SI 2006/2697, reg 3(6) applies: see reg 3(1), (4), (4A), (4B), Schs 3, 3A, 4 (art 3(4A), (4B), Sch 3A added by SI 2008/702). The Plant Health (Fees) (Forestry) Regulations 2006, SI 2006/2697, reg 3(6) applies to a consignment of (or a consignment which an inspector reasonably suspects to be): (a) isolated bark of a type listed in the Plant Health (Forestry) Order 2005, SI 2005/2517, Sch 5 Pt A para 3 or Sch 5 Pt B para 3 (see PARA 64); or (b) wood of a type listed in Sch 5 Pt A para 4 or Sch 5 Pt B para 1 (see PARA 64), other than wood packaging material which is actually in use in the transport of objects of all kinds, to which the provisions of Pt 2 (arts 3-17) (see PARAS 63 et seq) apply: Plant Health (Fees) (Forestry) Regulations 2006, SI 2006/2697, reg 3(6). 'Documentary check' has the meaning given by EC Council Directive 2000/29 (OJ L169, 10.7.2000, p 1) art 13a(1)(b)(i): Plant Health (Fees) (Forestry) Regulations 2006, SI 2006/2697, art 2(1). As to the meaning of 'wood' see PARA 63 note 2; and as to the meaning of 'isolated bark' see PARA 63 note 3.

Where the official body of destination of any relevant material landed in Great Britain for the purpose of transit has agreed with the Commissioners that it will be responsible for some or all of the matters referred to in heads (1)-(6) above, an inspector must only satisfy himself as to the matters referred to in head (7) above and any matters referred to in heads (1)-(6) above not subject to the agreement: Plant Health (Forestry) Order 2005, SI 2005/2517, art 12(5). Where the official body of point of entry of any relevant material that has been consigned to Great Britain via another part of the European Community by way of transit has agreed with the Forestry Commissioners, as the official body of destination, that the Commissioners are to be responsible for some or all of the matters referred to in heads (1)-(6) above, the matters as to which an inspector must satisfy himself are to be limited accordingly: art 12(6). For the purposes of art 12(5), (6), 'transit' has the same meaning as in EC Council Directive 2000/29 (OJ L169, 10.7.2000, p 1) art 2(1)(r) (ie the movement of goods which are subject to customs supervision from one point to another within the customs territory of the Community as referred to in EEC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) establishing the Community Customs Code, art 91), but otherwise bears its ordinary meaning: Plant Health (Forestry) Order 2005, SI 2005/2517, art 2(2). 'Official body of destination' has the same meaning as in EC Council Directive 2000/29 (OJ L169, 10.7.2000, p 1) art 2(1)(l) (ie the responsible official body in a member state in charge of the area where the 'customs office of destination' within the meaning of EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) laying down provisions for the implementation of the Customs Code, art 340b(3) is situated): Plant Health (Forestry) Order 2005, SI 2005/2517, art 2(1). As to the meaning of 'official body of point of entry' see PARA 63 note 25; and as to the meaning of 'European Community' for these purposes see PARA 63 note 12.

Where an inspector is satisfied as to the matters referred to in head (7) above, he must stamp the phytosanitary certificate, phytosanitary certificate for re-export or industry certificate with the official stamp of the Forestry Commissioners and the date the certificate was delivered in accordance with art 9(1) (see PARA 67), and, where applicable, complete the relevant headings of the plant health movement document: art 12(7).

6 le under the Plant Health (Forestry) Order 2005, SI 2005/2517, Pt 6 (regs 30-37): see PARAS 82-85.

7 Plant Health (Forestry) Order 2005, SI 2005/2517, art 10(1). Contravention of art 10(1) is an offence: see PARA 94.

8 As to the meaning of 'importer' see PARA 67 note 9.

9 Plant Health (Forestry) Order 2005, SI 2005/2517, art 10(4). Contravention of art 10(4) is an offence: see PARA 94.

10 As to the meaning of 'third country' see PARA 63 note 12.

11 Plant Health (Forestry) Order 2005, SI 2005/2517, art 11(a).

12 le by the Plant Health (Forestry) Order 2005, SI 2005/2517, art 8: see PARA 66.

13 Plant Health (Forestry) Order 2005, SI 2005/2517, art 11(b). The 'requirements for certificates' are the requirements in art 7: see PARA 65.

14 Plant Health (Forestry) Order 2005, SI 2005/2517, art 11(c).

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69. Detention of material.

Where he has reasonable grounds for suspecting that there is a risk of spread of any tree pest¹ from any relevant material², an inspector³ may request an officer for Revenue and Customs to exercise the power to detain material⁴ for the purpose of enabling the inspector to enforce any relevant provision⁵. Such a request:

- 195 (1) may identify the relevant material in any way⁶; and
- 196 (2) must be made either in writing, or orally and confirmed in writing⁷.

Where an inspector issues a notice or takes any other action⁸ in respect of relevant material so detained⁹ by an officer for Revenue and Customs he must advise that officer in writing of that notice or action¹⁰.

An officer for Revenue and Customs may, where requested by an inspector in accordance with these provisions, detain for not more than two working days¹¹ any relevant material or any container, package or cargo of any kind which has been or may have been in contact with that material and which is referred to in that request in so far as the material, container, package or cargo is under customs supervision¹² and has not been assigned a customs approved treatment or use¹³. The Commissioners for Revenue and Customs may direct that any relevant material detained under this power is to be dealt with during the period of its detention in such manner as they may specify¹⁴.

The importer¹⁵ of any relevant material so detained is responsible for the costs of storage which arise during the period of its detention¹⁶.

1 As to the meaning of 'tree pest' see PARA 63 note 2.

2 As to the meaning of 'relevant material' see PARA 63 note 3.

3 As to the meaning of 'inspector' see PARA 67 note 9.

4 Ie the power in the Plant Health (Forestry) Order 2005, SI 2005/2517, art 14(1): see the text and notes 11-13.

5 Plant Health (Forestry) Order 2005, SI 2005/2517, art 13(1). The 'relevant provisions' are the provisions of the Plant Health (Forestry) Order 2005, SI 2005/2517: see PARAS 63 et seq.

6 Plant Health (Forestry) Order 2005, SI 2005/2517, art 13(2)(a).

7 Plant Health (Forestry) Order 2005, SI 2005/2517, art 13(2)(b).

8 Ie under the Plant Health (Forestry) Order 2005, SI 2005/2517: see PARAS 63 et seq.

9 Ie detained under the power in the Plant Health (Forestry) Order 2005, SI 2005/2517, art 14(1) (see PARA 69).

10 Plant Health (Forestry) Order 2005, SI 2005/2517, art 13(3).

11 As to the meaning of 'working day' see PARA 64 note 10.

12 Ie pursuant to EEC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) establishing the Community Customs Code, art 37.

13 Plant Health (Forestry) Order 2005, SI 2005/2517, arts 3, 14(1). The reference to a 'customs approved treatment or use' is to such a treatment or use within the meaning of EEC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 4(15): Plant Health (Forestry) Order 2005, SI 2005/2517, arts 3, 14(1).

14 Plant Health (Forestry) Order 2005, SI 2005/2517, art 14(2).

15 As to the meaning of 'importer' see PARA 67 note 9.

16 Plant Health (Forestry) Order 2005, SI 2005/2517, art 14(3).

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70. Requirements to be met by relevant material prior to inspection at its place or country of destination.

The following provisions apply to specified relevant material¹ before it has been discharged² by an inspector³. Such relevant material must not be moved within Great Britain⁴ or, where applicable, from Great Britain to any other place within the European Community⁵, unless:

- 197 (1) it is accompanied by a plant health movement document⁶; and
- 198 (2) save where the Forestry Commissioners have authorised otherwise, its packaging and the vehicles in which it is transported are sealed in such a way that there is no risk of it causing infestation, infection or contamination or of any change in the identity of the material⁷.

The importer⁸ of relevant material to which these provisions apply, other than relevant material whose destination is elsewhere in the European Community, must give to the Commissioners notice of the following particulars three working days⁹ before it is landed¹⁰:

- 199 (a) the name, address and location of the approved place of inspection¹¹ or other area of plant health control¹² for which the relevant material is destined¹³;
- 200 (b) the scheduled date and time of arrival of the relevant material at the place referred to in head (a) above¹⁴;
- 201 (c) if available, the individual serial number of the plant health movement document¹⁵;
- 202 (d) if available, the date and place at which the plant health movement document was drawn up¹⁶;
- 203 (e) the name, address and registration number of the importer¹⁷; and
- 204 (f) the reference number of the phytosanitary certificate¹⁸, phytosanitary certificate for re-export¹⁹ or industry certificate²⁰ required to accompany the relevant material²¹,

and must notify the Commissioners immediately in writing of any changes to such particulars²². The address to which notice must be so given is such address as the Commissioners must specify from time to time which may include an address for electronic communications²³.

1 le the relevant material referred to in the Plant Health (Forestry) Order 2005, SI 2005/2517, art 6(2)(a) or (b) (see PARA 64) which: (1) is the subject of an agreement described in art 12(5) or (6) (see PARA 68); or (2) whether or not it is subject to an agreement referred to in head (1) in the text, is destined for an approved place of inspection: see art 16(1). As to the meaning of 'relevant material' generally see PARA 63 note 3.

2 le pursuant to the Plant Health (Forestry) Order 2005, SI 2005/2517, art 10(1): see PARA 68.

3 Plant Health (Forestry) Order 2005, SI 2005/2517, art 16(1). As to the meaning of 'inspector' see PARA 67 note 9.

4 As to the meaning of 'Great Britain' see PARA 2 note 2.

5 As to the meaning of 'European Community' for these purposes see PARA 63 note 12.

6 Plant Health (Forestry) Order 2005, SI 2005/2517, art 16(2)(a). As to the meaning of 'plant health movement document' see PARA 68 note 5. The plant health movement document required under head (1) in the text must be in the form set out in Sch 13 Pt B and the information contained must be given in at least one of the official languages of the European Community and must either be completed in typescript or written in block capitals, or, in agreement with the Forestry Commissioners and the official body of destination or entry, must be completed by electronic means: Sch 13 Pt A paras 1, 2. As to the Forestry Commissioners see PARA 34 et seq. As to the meaning of 'official body of destination' see PARA 68 note 5; and as to the meaning of 'official body of point of entry' see PARA 63 note 25. Contravention of art 16(2) is an offence: see PARA 94.

7 Plant Health (Forestry) Order 2005, SI 2005/2517, art 16(2)(b). Contravention of art 16(2) is an offence: see PARA 94.

8 As to the meaning of 'importer' see PARA 67 note 9.

9 As to the meaning of 'working day' see PARA 64 note 10.

10 As to the meaning of 'landed' see PARA 63 note 1.

11 As to the meaning of 'approved place of inspection' see PARA 68 note 2. In accordance with the provisions of the Plant Health (Forestry) Order 2005, SI 2005/2517, art 17, the Commissioners may approve a place of destination of relevant material referred to in art 6(2)(a) or (b) as an approved place of inspection in relation to that material: art 17(1). An application for approval of a place of destination of relevant material as an approved place of inspection may be made to the Commissioners by an importer or other person responsible for that place in such form and containing such information as the Commissioners may specify: art 17(2). An approval may be granted subject to conditions, including conditions relating to the storage of relevant material, and may be withdrawn at any time if the Commissioners no longer consider that the place to which the approval relates is suitable for the purposes for which it was given: art 17(3). For these purposes, the Commissioners may only approve a place of destination of relevant material that is the subject of an agreement described in art 12(6) (see PARA 68) if the agreement so provides: art 17(4). The Commissioners may only approve a place of destination of relevant material as an approved place of inspection where that place is approved by the Commissioners for Revenue and Customs for use as a temporary storage facility as referred to in EC Commission Regulation 2454/93 (OJ L253, 11.10.93, p 1) laying down provisions for the implementation of the Customs Code, art 185(1): Plant Health (Forestry) Order 2005, SI 2005/2517, art 17(5).

12 As to the meaning of 'area of plant health control' see PARA 68 note 2.

13 Plant Health (Forestry) Order 2005, SI 2005/2517, art 16(3)(a). Contravention of art 16(3) is an offence: see PARA 94.

14 Plant Health (Forestry) Order 2005, SI 2005/2517, art 16(3)(b). See note 13.

15 Plant Health (Forestry) Order 2005, SI 2005/2517, art 16(3)(c). See note 13.

16 Plant Health (Forestry) Order 2005, SI 2005/2517, art 16(3)(d). See note 13.

17 Plant Health (Forestry) Order 2005, SI 2005/2517, art 16(3)(e). See note 13.

18 As to the meaning of 'phytosanitary certificate' see PARA 63 note 13.

19 As to the meaning of 'phytosanitary certificate for re-export' see PARA 63 note 13.

20 As to the meaning of 'industry certificate' see PARA 65 note 18.

21 Plant Health (Forestry) Order 2005, SI 2005/2517, art 16(3)(f). See note 13.

22 Plant Health (Forestry) Order 2005, SI 2005/2517, art 16(3). See note 13.

23 Plant Health (Forestry) Order 2005, SI 2005/2517, art 16(4). As to the meaning of 'electronic communications' see PARA 64 note 13.

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71. Prohibition against introduction and spread of *Phytophthora ramorum*.

No person may¹:

- 205 (1) introduce *Phytophthora ramorum*² into Great Britain³ or spread *Phytophthora ramorum* within Great Britain⁴;
- 206 (2) import into Great Britain a susceptible tree⁵ originating in the United States of America unless it is accompanied by a phytosanitary certificate⁶ issued in accordance with the relevant requirements⁷, or, in the case of a susceptible tree for which a phytosanitary certificate for re-export⁸ has also been issued, a certified copy of the phytosanitary certificate⁹;
- 207 (3) subject to the prescribed exception¹⁰, import into Great Britain susceptible wood¹¹ originating in the USA unless it is accompanied by a phytosanitary certificate issued¹² in accordance with the relevant requirements¹³.

Subject to the prescribed exception¹⁴, no person may import into Great Britain any susceptible tree or susceptible wood originating in the USA unless he has notified an inspector¹⁵ in writing of his intention to do so and of the proposed point of entry and means of its introduction at least three days before the intended date of landing¹⁶.

No person may import into Great Britain susceptible bark¹⁷ originating in the USA¹⁸.

Where a consignment of susceptible material¹⁹ for which a phytosanitary certificate is required and has been issued under the above provisions has been consigned to, stored, repacked or split up in a third country²⁰ other than that in which the certificate was issued, the original phytosanitary certificate or a certified copy of it must accompany the material together with a phytosanitary certificate for re-export²¹ issued by the official plant health service of that third country²².

1 Is subject to the Plant Health (Forestry) (*Phytophthora ramorum*) (Great Britain) Order 2004, SI 2004/3213, art 9: see PARA 89. Failure to comply with the prohibitions contained in arts 3, 4 is an offence: see PARA 95.

2 '*Phytophthora ramorum*' refers to the pest *Phytophthora ramorum* Werres, De Cock & Man in 't Veld sp nov: Plant Health (Forestry) (*Phytophthora ramorum*) (Great Britain) Order 2004, SI 2004/3213, art 2.

3 As to the meaning of 'Great Britain' see PARA 2 note 2.

4 Plant Health (Forestry) (*Phytophthora ramorum*) (Great Britain) Order 2004, SI 2004/3213, art 3.

5 'Susceptible tree' means a tree of the species and genera described in the Plant Health (Forestry) (*Phytophthora ramorum*) (Great Britain) Order 2004, SI 2004/3213, Schedule col 1 s 1 (substituted by SI 2007/3450), but excludes the fruit or seed of such a tree: Plant Health (Forestry) (*Phytophthora ramorum*) (Great Britain) Order 2004, SI 2004/3213, art 2. The trees in question are: *Acer macrophyllum* Pursh; *Acer pseudoplatanus* L; *Adiantum aleuticum* (Rupr) Paris; *Adiantum jordanii* C Muell; *Aesculus californica* (Spach) Nutt; *Aesculus hippocastanum* L; *Arbutus menziesii* Pursch; *Arbutus unedo* L; *Arctostaphylos* spp Adans; *Calluna vulgaris* (L) Hull; *Castanea sativa* Mill; *Fagus sylvatica* L; *Frangula californica* (Eschsch) Gray; *Frangula purshiana* (DC) Cooper; *Fraxinus excelsior* L; *Griselinia littoralis* (Raoul); *Hamamelis virginiana* L; *Heteromeles arbutifolia* (Lindley) M Roemer; *Kalmia latifolia* L; *Laurus nobilis* L; *Leucothoe* spp D Don; *Lithocarpus densiflorus* (Hook & Arn) Rehd; *Lonicera hispidula* (Lindl) Dougl ex Torr & Gray; *Magnolia* spp L; *Michelia doltsopa* Buch-Ham ex DC; *Nothofagus obliqua* (Mirbel) Blume; *Osmanthus heterophyllus* (G Don) PS Green; *Parrotia persica* (DC) CA Meyer; *Photinia x fraseri* Dress; *Pieris* spp D Don; *Pseudotsuga menziesii* (Mirbel) Franco; *Quercus* spp L; *Rosa*

gymnocarpa Nutt; *Salix caprea* L; *Sequoia sempervirens* (Lamb ex D Don) Endl; *Syringa vulgaris* L; *Taxus* spp L; *Trientalis latifolia* (Hook); *Umbellularia californica* (Hook & Arn) Nutt; *Vaccinium ovatum* Pursh: Schedule col 1 s I (as so substituted).

6 As to the meaning of 'phytosanitary certificate' see PARA 63 note 13 (definition applied by the Plant Health (Forestry) (*Phytophthora ramorum*) (Great Britain) Order 2004, SI 2004/3213, art 2).

7 It is in accordance with the requirements of the Plant Health (Forestry) (*Phytophthora ramorum*) (Great Britain) Order 2004, SI 2004/3213, Schedule. Those requirements are as follows: either (1) the certificate must contain an additional declaration that the material originates in an area in which non-European isolates of *Phytophthora ramorum* are known not to occur, in which case the name of the area from where the material originates must be specified under 'place of origin'; or (2) the certificate must be issued only after official verification by the official plant health service of the country from which the material originates (the 'relevant plant health service') that (a) upon official inspections carried out during the last complete cycle of vegetation of the susceptible material the subject of the certificate, or upon laboratory testing of apparent symptoms of non-European isolates of *Phytophthora ramorum*, no signs of non-European isolates of *Phytophthora ramorum* have been found on susceptible material or susceptible plant material at the place of production; and (b) representative samples of the susceptible material have been taken before shipment, and have been tested and found free from non-European isolates of *Phytophthora ramorum* in these tests, in which case the certificate must be indorsed by the relevant plant health service under the heading 'additional declaration' with the statement 'tested and found free from non-European isolates of *Phytophthora ramorum*': Schedule col 2 s I.

8 The term actually used in the Plant Health (Forestry) (*Phytophthora ramorum*) (Great Britain) Order 2004, SI 2004/3213, art 4(1) is 'reforwarding phytosanitary certificate' which is expressed by art 2 to have the same meaning as in the Plant Health (Forestry) (Great Britain) Order 1993, SI 1993/1283 (revoked). That definition is not, however, reproduced in the Plant Health (Forestry) Order 2005, SI 2005/2517 and the term is replaced by 'phytosanitary certificate for re-export': see PARA 63 note 13.

9 Plant Health (Forestry) (*Phytophthora ramorum*) (Great Britain) Order 2004, SI 2004/3213, art 4(1).

10 It is subject to the Plant Health (Forestry) (*Phytophthora ramorum*) (Great Britain) Order 2004, SI 2004/3213, art 4(4), which provides that art 4(2) (see head (3) in the text) and art 4(3) (see the text and notes 14-16) do not apply to wood of *Quercus* L originating in the USA which is imported from Switzerland.

11 'Susceptible wood' means wood described in the Plant Health (Forestry) (*Phytophthora ramorum*) (Great Britain) Order 2004, SI 2004/3213, Schedule col 1 s II (substituted by SI 2007/3450): Plant Health (Forestry) (*Phytophthora ramorum*) (Great Britain) Order 2004, SI 2004/3213, art 2. The wood in question is (1) wood of *Acer macrophyllum* Pursh, *Aesculus californica* (Spach) Nutt, *Lithocarpus densiflorus* (Hook & Arn) Rehd and *Taxus breviflora* Nutt; (2) wood of *Quercus* L: Schedule col 1 s II (as so substituted).

12 It is issued in accordance with the relevant requirements of the Plant Health (Forestry) (*Phytophthora ramorum*) (Great Britain) Order 2004, SI 2004/3213, Schedule. Those requirements are: (1) that in the case of wood described in note 11 head (1), one of the following alternatives is satisfied: (a) the certificate must contain an additional declaration that the material originates in an area in which non-European isolates of *Phytophthora ramorum* are known not to occur, in which case the name of the area from where the material originates must be specified under 'place of origin'; (b) the certificate must be issued only after official verification by the relevant plant health service that the wood has been stripped of its bark, and that at least one of the following applies: (i) that it has been squared so as to remove entirely the rounded surface; (ii) that the moisture content of the wood does not exceed 20% (expressed as a percentage of the dry matter); or (iii) that the wood has been disinfected by an appropriate hot-air or hot-water treatment; or (c) in addition to the issue of a certificate, in the case of sawn wood with or without residual bark attached, there is evidence by a mark 'Kiln-dried', 'KD' or another internationally recognised mark put on the wood or on its packaging in accordance with current commercial usage, that it has undergone kiln-drying to below 20% moisture content (expressed as a percentage of dry matter) at the time of manufacture, achieved through an appropriate time/temperature schedule; (2) in the case of wood described in note 11 head (2), if the wood originates in an area in which non-European isolates of *Phytophthora ramorum* are known not to occur, the certificate must contain an additional declaration to that effect and the name of the area from where the material originates must be specified under 'place of origin': Schedule col 2 s II.

13 Plant Health (Forestry) (*Phytophthora ramorum*) (Great Britain) Order 2004, SI 2004/3213, art 4(2).

14 It is subject to the Plant Health (Forestry) (*Phytophthora ramorum*) (Great Britain) Order 2004, SI 2004/3213, art 4(4): see note 10.

15 'Inspector' means any person authorised to be an inspector for the purposes of the Plant Health (Forestry) Order 2005, SI 2005/2517 (see PARAS 63 et seq): Plant Health (Forestry) (*Phytophthora ramorum*) (Great Britain) Order 2004, SI 2004/3213, art 2.

16 Plant Health (Forestry) (*Phytophthora ramorum*) (Great Britain) Order 2004, SI 2004/3213, art 4(3).

17 'Susceptible bark' means isolated bark of *Acer macrophyllum* Pursh, *Aesculus californica* (Spach) Nutt, *Lithocarpus densiflorus* (Hook & Arn) Rehd, *Quercus* spp L and *Taxus brevifolia* Nutt: Plant Health (Forestry) (*Phytophthora ramorum*) (Great Britain) Order 2004, SI 2004/3213, art 2 (amended by SI 2007/3450). As to the meaning of 'isolated bark' see PARA 63 note 3 (definition applied by art 2).

18 Plant Health (Forestry) (*Phytophthora ramorum*) (Great Britain) Order 2004, SI 2004/3213, art 4(5).

19 'Susceptible material' means susceptible bark, susceptible trees and susceptible wood: Plant Health (Forestry) (*Phytophthora ramorum*) (Great Britain) Order 2004, SI 2004/3213, art 2.

20 As to the meaning of 'third country' see PARA 63 note 12 (definition applied by the Plant Health (Forestry) (*Phytophthora ramorum*) (Great Britain) Order 2004, SI 2004/3213, art 2).

21 See note 8.

22 Plant Health (Forestry) (*Phytophthora ramorum*) (Great Britain) Order 2004, SI 2004/3213, art 7(2). Any phytosanitary certificate issued for these purposes by or with the authority of an official plant health service of a third country is to be deemed to have been issued in accordance with the relevant requirements of the Schedule; and any susceptible material for which a plant passport has been issued for the purposes of that Order or equivalent legislation in the country of issue by or with the authority of an official plant health service of a member state or another part of the United Kingdom or the Channel Islands or Isle of Man, is to be deemed to meet the requirements of the Schedule: art 8(1), (2).

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B. INTERNAL COMMUNITY CONTROLS ON MOVEMENTS

(A) CONTROLS GENERALLY

72. Prohibitions and restrictions on landing tree pests and relevant material.

The landing¹ in Great Britain² of tree pests³ or relevant material⁴ of the specified descriptions⁵ which are introduced into Great Britain from another part of the European Community⁶, whether as country of origin or country of transit, is prohibited⁷. The prohibitions on landing certain specified descriptions of relevant material⁸ do not, however, apply to small quantities of any relevant material, not showing any signs of the presence of any tree pest, which is not intended for use in the course of a trade or business and is intended for household use⁹.

1 As to the meaning of 'landing' see PARA 63 note 1.

2 As to the meaning of 'Great Britain' see PARA 2 note 2.

3 As to the meaning of 'tree pest' see PARA 63 note 2.

4 As to the meaning of 'relevant material' see PARA 63 note 3.

5 The specified descriptions are (Plant Health (Forestry) Order 2005, SI 2005/2517, art 18(1)):

52 (1) any tree pest of a description specified in Sch 1 (see PARA 63 note 4);

53 (2) any relevant material of a description specified in Sch 2 col 2 carrying or infected with a tree pest of a description specified in Sch 2 col 3 opposite the reference to that relevant material (see PARA 63 note 8);

54 (3) any tree pest which, although not specified in Sch 1 or in Sch 2 col 3, is not normally present in Great Britain and which is likely to be injurious to trees in Great Britain;

55 (4) any relevant material of a description specified in Sch 3 col 2 which originates in a third country specified in Sch 3 col 3 opposite the reference to that relevant material (see PARA 63 note 12);

56 (5) subject to art 21 (see the text and notes 8-9), any relevant material not prohibited under head (4) above which is of a description specified in Sch 4 Pt A col 2 (see PARA 63 note 17), unless the requirements specified in Sch 4 Pt A col 3 opposite the reference to that relevant material have been complied with;

57 (6) subject to art 21, any relevant material not prohibited under head (4) above which is of a description specified in Sch 4 Pt B col 2 (see heads (a)-(j) below), unless the requirements specified in Sch 4 Pt B col 3 opposite the reference to that relevant material have been complied with; and

58 (7) subject to art 21 and without prejudice to any requirements specified in Sch 4 Pt A col 3 or in Sch 4 Pt B col 3 relating to the relevant material, any relevant material which is of a description specified in Sch 4 Pt C col 2 (see PARA 63 note 20) and which is not prohibited under head (4) above, unless the requirements specified in Sch 4 Pt C col 3 opposite the reference to that relevant material have been complied with.

The specified descriptions of relevant material referred to in head (6) above, and the prescribed requirements in relation to such material, are as follows (Sch 4 Pt B (amended by SI 2006/2696; SI 2008/644)):

- 59 (a) in relation to wood of *Platanus* L, including wood which has not kept its natural round surface, either the wood must be accompanied by an official statement that it originates in an area or areas known to be free from *Ceratocystis fimbriata* f sp *Platani* Walter, or there must be evidence by a mark 'Kiln-dried' or 'KD' or another internationally recognised mark, put on the wood or on its packaging in accordance with current commercial usage, that it has undergone kiln-drying to below 20% moisture content, expressed as a percentage of dry matter, at time of manufacture, achieved through an appropriate time/temperature schedule;
- 60 (b) in relation to trees, other than seeds, of *Pinus* L, intended for planting, without prejudice to the requirements in head (c) below, the trees must be accompanied by an official statement that no symptoms of *Scirrhia pini* Funk and Parker have been observed at the place of production or in its immediate vicinity since the beginning of the last complete cycle of vegetation;
- 61 (c) in relation to trees, other than seeds, of *Abies* Mill, *Larix* Mill, *Picea* A Dietr, *Pinus* L, *Pseudotsuga* Carr or *Tsuga* Carr, intended for planting, without prejudice to the requirements in head (2) above, the trees must be accompanied by an official statement that no symptoms of *Melampsora Medusae* Thümen have been observed at the place of production or in its immediate vicinity since the beginning of the last complete cycle of vegetation;
- 62 (d) in relation to trees intended for planting, including seeds and cones for propagation purposes, of the genera and species referred to in EC Commission Decision 2007/433 on provisional emergency measures to prevent the introduction into and the spread within the Community of *Gibberella circinata* Nirenberg & O'Donnell, art 1(2), originating in any third country, the trees must, without prejudice to the requirements heads (b), (c), above or head (j) below, be accompanied by an official statement that they have been grown in accordance with the specifications in Annex I point II para (a), (b) or (c);
- 63 (e) in relation to trees, other than seeds, of *Populus* L, intended for planting, the trees must be accompanied by an official statement that no symptoms of *Melampsora Medusae* Thümen have been observed at the place of production or in its immediate vicinity since the beginning of the last complete cycle of vegetation;
- 64 (f) in relation to trees, other than seeds, of *Castanea* Mill or *Quercus* L, intended for planting, without prejudice to the requirements in head (g) below, the trees must be accompanied by an official statement that either they originate in an area or areas known to be free from *Cryphonectria parasitica* (Murrill) Barr, or no symptoms of *Cryphonectria parasitica* (Murrill) Barr have been observed at the place of production or in its immediate vicinity since the beginning of the last complete cycle of vegetation;
- 65 (g) in relation to trees, other than fruit or seeds, of *Castanea* Mill, intended for planting, without prejudice to the requirements in head (f) above, the trees must be accompanied by an official statement that either the trees have been grown throughout their life or since their introduction into the Community in a place of production in a member state where *Dryocosmus kuriphilus* Yasumatsu is not known to occur, or the trees have been grown throughout their life or since their introduction into the Community in a place of production in an area or areas established by the national plant protection organisation in a member state as being free from *Dryocosmus kuriphilus* Yasumatsu, in accordance with ISPM No 4 (ie International Standard for Phytosanitary Measures No 4);
- 66 (h) in relation to trees, other than seeds of *Quercus* L, intended for planting, without prejudice to the requirements in head (f) above or head (j) below, the trees must be accompanied by an official statement that they have been grown in a nursery and that no symptoms of *Thaumetopoea processionea* (L) have been observed at the place of production or in its immediate vicinity since the beginning of the last complete cycle of vegetation;
- 67 (i) in relation to trees, other than seeds, of *Platanus* L, intended for planting, the trees must be accompanied by an official statement that either they originate in an area or areas known to be free from *Ceratocystis fimbriata* f sp *platani* Walter or no symptoms of *Ceratocystis fimbriata* f sp *platani* Walter have been observed at the place of production or in its immediate vicinity since the beginning of the last complete cycle of vegetation;
- 68 (j) in relation to trees with roots, planted or intended for planting, grown in the open air, there must be evidence that the place of production is known to be free from *Clavibacter michiganensis* ssp *Sepedonicus* (Spieckermann and Kotthoff) Davis et al, *Globodera pallida* (Stone) Behrens, *Globodera rostochiensis* (Wollenweber) Behrens and *Synchytrium endobioticum* (Schilbersky) Percival.

As to the meanings of 'tree' and 'wood' see PARA 63 note 2. 'Official statement' means a statement issued by an authorised officer or a statement in a plant passport (see PARA 65 note 13): Plant Health (Forestry) Order 2005,

SI 2005/2517, art 2(1). 'Official' in relation to any testing or other procedure required to be carried out in respect of any relevant material means carried out by or under the supervision of the responsible official body (see PARA 65 note 13) or the national plant protection organisation (see PARA 65 note 13) of the country in which the testing or other procedure is carried out and 'officially' is to be construed accordingly: art 2(1). As to the meanings of 'responsible official body' and 'national plant protection organisation' see PARA 65 note 13.

6 As to the meaning of 'European Community' for these purposes see PARA 63 note 12.

7 Plant Health (Forestry) Order 2005, SI 2005/2517, art 18(1). Article 18(1) does not apply to relevant material prohibited from landing in Great Britain by art 5(1)(e) or (f) (see PARA 63): art 18(2).

8 As to the prohibitions on landing in the Plant Health (Forestry) Order 2005, SI 2005/2517, art 18(1)(e), (f) and (g): see note 5 heads (5)-(7).

9 Plant Health (Forestry) Order 2005, SI 2005/2517, art 21.

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73. Prevention of the spread of tree pests.

No person may knowingly keep, store, sell, plant, move or otherwise dispose of or knowingly cause or permit to be kept, stored, sold, planted, moved or otherwise disposed of:

- 208 (1) any tree pest¹ of a specified description²;
- 209 (2) any relevant material³ of a specified description⁴ carrying or infected with a tree pest of a description specified⁵ in relation to that relevant material⁶;
- 210 (3) any tree pest which, although not specified as described in head (1) or head (2) above, is not normally present in Great Britain⁷ and which is likely to be injurious to trees in Great Britain⁸; or
- 211 (4) any relevant material landed⁹ in contravention¹⁰ of certain statutory prohibitions¹¹.

Nothing in these provisions, however, prohibits the keeping, storing, moving or otherwise disposing of any tree pest or relevant material referred to therein in compliance with any requirement imposed¹² by an inspector¹³ in respect of that tree pest or relevant material¹⁴.

1 As to the meaning of 'tree pest' see PARA 63 note 2.

2 Plant Health (Forestry) Order 2005, SI 2005/2517, art 19(1)(a). A 'specified description' is a description specified in Sch 1: see PARA 63 note 4. Contravention of art 19(1) is an offence: see PARA 94.

3 As to the meaning of 'relevant material' see PARA 63 note 3.

4 I.e. of a description specified in the Plant Health (Forestry) Order 2005, SI 2005/2517, Sch 2 col 2: see PARA 63 note 8.

5 I.e. of a description specified in the Plant Health (Forestry) Order 2005, SI 2005/2517, Sch 2 col 3: see PARA 63 note 8.

6 Plant Health (Forestry) Order 2005, SI 2005/2517, art 19(1)(b). See note 2.

7 As to the meaning of 'Great Britain' see PARA 2 note 2.

8 Plant Health (Forestry) Order 2005, SI 2005/2517, art 19(1)(c). See note 2.

9 As to the meaning of 'landed' see PARA 63 note 1.

10 I.e. in contravention of the Plant Health (Forestry) Order 2005, SI 2005/2517, art 5(1)(d), (e) or (f) (see PARA 63) or art 18(1)(d), (e), (f) or (g) (see PARA 72).

11 Plant Health (Forestry) Order 2005, SI 2005/2517, art 19(1)(d). See note 2.

12 I.e. under the Plant Health (Forestry) Order 2005, SI 2005/2517, Pt 6 (arts 30-37): see PARA 82-85.

13 As to the meaning of 'inspector' see PARA 67 note 9.

14 Plant Health (Forestry) Order 2005, SI 2005/2517, art 19(2).

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74. Requirements for plant passports.

Subject to certain exceptions¹, the landing² in or movement within Great Britain³ by any person of any relevant material⁴ of a specified description⁵ comprising EC transit goods⁶ or material consigned to Great Britain from another part of the European Community⁷ is prohibited, unless that relevant material is accompanied by a plant passport⁸. No person may move within Great Britain any relevant material, which if comprised of EC transit goods or relevant material consigned to Great Britain from another part of the European Community would be subject to that prohibition, after the phytosanitary certificate⁹ accompanying it has been officially stamped¹⁰ unless it is accompanied by a plant passport¹¹.

The landing in or movement within Great Britain by any person of any relevant material of a further specified description¹² comprising EC transit goods or material consigned to Great Britain from another part of the European Community is, subject to certain exceptions¹³, prohibited, unless that relevant material is accompanied by a plant passport which is valid for Great Britain as a protected zone¹⁴. No person must move¹⁵ within Great Britain any relevant material, which if comprised of EC transit goods or material consigned to Great Britain from another part of the European Community would be subject to that prohibition, after the phytosanitary certificate accompanying it has been officially stamped¹⁶ unless it is accompanied by a plant passport which is valid for Great Britain as a protected zone¹⁷.

Subject to certain exceptions¹⁸, no person may:

- 212 (1) consign from Great Britain to another part of the European Community any relevant material of a certain specified description¹⁹ unless that relevant material is accompanied by a plant passport²⁰;
- 213 (2) consign from Great Britain to a protected zone in another part of the European Community any relevant material of a further specified description²¹ unless that relevant material is accompanied by a plant passport which is valid for that protected zone²².

Contravention of any of these provisions is an offence²³.

1 le subject to the Plant Health (Forestry) Order 2005, SI 2005/2517, arts 20(7), 21. The prohibitions imposed on landing by art 20(1), (2) (see the text and notes 2-8, 12-14) do not apply to relevant material in respect of which the Forestry Commissioners have agreed, pursuant to an agreement described in art 12(6) (see PARA 68), to carry out a plant health check (art 20(7)); and the requirements in art 20(1), (2), (5) and (6) (see the text and notes 2-8, 12-14; and heads (1)-(2) in the text) for certain relevant material to be accompanied by a plant passport do not apply to small quantities of any relevant material, not showing any signs of the presence of any tree pest, which (1) is not intended for use in the course of a trade or business; and (2) is intended for household use (art 21). As to the meaning of 'tree pest' see PARA 63 note 2; and as to the Forestry Commissioners see PARA 34 et seq.

2 As to the meaning of 'landing' see PARA 63 note 1.

3 As to the meaning of 'Great Britain' see PARA 2 note 2.

4 As to the meaning of 'relevant material' see PARA 63 note 3.

5 le of a description specified in the Plant Health (Forestry) Order 2005, SI 2005/2517, Sch 6 Pt A. The specified descriptions are as follows: (1) wood referred to in para (a) or (b) of the definition of 'wood' in art 2(1) (see PARA 63 note 2), where it (a) has been obtained in whole or in part from *Platanus* L, including wood which has not kept its natural round surface; and (b) meets one of the descriptions specified in EC Council Directive 2000/29 (OJ L169, 10.7.2000, p 1) Annex V Pt A s I item 1.7(b); (2) trees, other than seeds, of the genera *Abies* Mill, *Larix* Mill, *Picea* A Dietr, *Pinus* L, *Platanus* L, *Populus* L, *Pseudotsuga* Carr or *Tsuga* Carr, intended for planting and produced by producers whose production and sale is authorised to persons engaged in tree production in the course of a trade or business, other than those trees which are prepared and ready for sale to the final consumer, and for which it is ensured by the responsible official body of the consignor country, that the production thereof is separate from that of other products; (3) trees, other than seeds, of *Castanea* Mill, intended for planting; (4) trees intended for planting, including seeds and cones intended for propagating, other than those in item 2 of the genera and species referred to in EC Commission Decision 2007/433 on provisional emergency measures to prevent the introduction into and the spread within the Community of *Gibberella circinata* Nirenberg & O'Donnell, art 1(2); and (5) trees, other than seeds, whether or not prepared and ready for sale to the final consumer, of *Quercus* L, intended for planting: Plant Health (Forestry) Order 2005, SI 2005/2517, Sch 6 Pt A (paras 1-5) (amended by SI 2006/2696; SI 2008/644). 'Trees intended for planting' means trees which at the time of their landing in Great Britain are either planted and are intended to remain planted or to be replanted, or not planted but are intended to be planted; and 'planting' has the same meaning as in EC Council Directive 2000/29 (OJ L169, 10.7.2000, p 1) art 2(1)(c) (ie any operation for the placing of plants to ensure their subsequent growth, reproduction or propagation): Plant Health (Forestry) Order 2005, SI 2005/2517, art 2(1).

6 As to the meaning of 'EC transit goods' see PARA 63 note 23.

7 As to the meaning of 'European Community' for these purposes see PARA 63 note 12.

8 Plant Health (Forestry) Order 2005, SI 2005/2517, art 20(1). As to the meaning of 'plant passport' see PARA 65 note 13.

9 As to the meaning of 'phytosanitary certificate' see PARA 63 note 13.

10 le in accordance with the Plant Health (Forestry) Order 2005, SI 2005/2517, art 12(7)(a): see PARA 68.

11 Plant Health (Forestry) Order 2005, SI 2005/2517, art 20(3).

12 le of a description specified in the Plant Health (Forestry) Order 2005, SI 2005/2517, Sch 6 Pt B. The specified descriptions are as follows: (1) trees of *Abies* Mill, *Larix* Mill, *Picea* A Dietr, *Pinus* L or *Pseudotsuga* Carr; (2) trees, other than seeds, of *Populus* L, intended for planting; (3) wood referred to in para (a) or (b) of the definition of 'wood' in art 2(1), where it (a) has been obtained in whole or in part from (i) conifers (*Coniferales*), excluding wood which is bark-free; (ii) *Castanea* Mill, excluding wood which is bark-free; and (b) meets one of the descriptions specified in EC Council Directive 2000/29 (OJ L169, 10.7.2000, p 1) Annex V Pt A s II item 1.10(b); (4) isolated bark of *Castanea* Mill or conifers (*Coniferales*): Plant Health (Forestry) Order 2005, SI 2005/2517, Sch 6 Pt B. As to the meaning of 'isolated bark' see PARA 63 note 3. As to the meaning of 'bark-free' see PARA 63 note 8.

13 le subject to the Plant Health (Forestry) Order 2005, SI 2005/2517, arts 20(7), 21 (see note 1) and art 22. Where a person moves relevant material of a description specified in Sch 6 Pt B (see note 12) through Great Britain to a destination outside Great Britain, he is not to be required to produce a plant passport which is valid for Great Britain as a protected zone (as to the meaning of which see note 14), if art 22(2) or (3) applies: art 22(1). A plant passport is not required in respect of relevant material described in art 22(1) if that material originates in Great Britain: art 22(2). Nor is a plant passport required in respect of relevant material described in art 22(1): (1) which during transit through Great Britain is accompanied by a document of a type normally used for trade purposes which certifies that the material originates outside Great Britain and is in transit to a final destination outside Great Britain; and (2) whose packaging and any vehicle used in connection with whose transit through Great Britain is (a) free from soil and plant debris; (b) free from any relevant tree pest in relation to which Great Britain is a protected zone; (c) of such a nature or construction as to ensure that, if any relevant tree pest is present in the relevant material, there is no risk of its spreading from the packaging or the vehicle as the case may be; and (d) sealed immediately after packaging or where appropriate after loading, and remains sealed during transit through Great Britain: art 22(3).

14 Plant Health (Forestry) Order 2005, SI 2005/2517, art 20(2). 'Protected zone' means a zone listed in EC Council Directive 2000/29 (OJ L169, 10.7.2000, p 1) Annex IV Pt B col 3 opposite the reference to the relevant material to which it relates: Plant Health (Forestry) Order 2005, SI 2005/2517, art 2(1).

15 le subject to the Plant Health (Forestry) Order 2005, SI 2005/2517, art 22: see note 13.

16 See note 10.

17 Plant Health (Forestry) Order 2005, SI 2005/2517, art 20(4).

18 Is subject to the Plant Health (Forestry) Order 2005, SI 2005/2517, art 21: see note 1.

19 Is of a description specified in the Plant Health (Forestry) Order 2005, SI 2005/2517, Sch 7 Pt A. The specified descriptions are as follows: (1) wood referred to in para (a) or (b) of the definition of 'wood' in art 2(1), where it (a) has been obtained in whole or in part from *Platanus* L, including wood which has not kept its natural round surface; and (b) meets one of the descriptions specified in EC Council Directive 2000/29 (OJ L169, 10.7.2000, p 1) Annex V Pt A s I item 1.7(b); (2) trees, other than seeds, of the genera *Abies* Mill, *Larix* Mill, *Picea* A Dietr, *Pinus* L, *Platanus* L, *Populus* L, *Pseudotsuga* Carr or *Tsuga* Carr, intended for planting and produced by producers whose production and sale is authorised to persons engaged in tree production in the course of a trade or business, other than those trees which are prepared and ready for sale to the final consumer, and for which it is ensured by the Forestry Commission, that the production thereof is separate from that of other products; (3) trees, other than seeds, of *Castanea* Mill, intended for planting; (4) trees intended for planting, including seeds and cones intended for propagating, other than those in item 2 of the genera and species referred to in EC Commission Decision 2007/433 on provisional emergency measures to prevent the introduction into and the spread within the Community of *Gibberella circinata* Nirenberg & O'Donnell, art 1(2); and (5) trees, other than seeds, whether or not prepared and ready for sale to the final consumer, of *Quercus* L, intended for planting: Plant Health (Forestry) Order 2005, SI 2005/2517, Sch 7 Pt A (amended by SI 2006/2696; SI 2008/644). 'Producer' in relation to relevant material means a person who grows or makes the material in the course of a trade or business: Plant Health (Forestry) Order 2005, SI 2005/2517, art 2(1). As to the Forestry Commission see PARA 34 et seq.

20 Plant Health (Forestry) Order 2005, SI 2005/2517, art 20(5).

21 Is of a description specified in the Plant Health (Forestry) Order 2005, SI 2005/2517, Sch 7 Pt B. The specified descriptions are as follows: (1) trees of *Abies* Mill, *Larix* Mill, *Picea* A Dietr, *Pinus* L or *Pseudotsuga* Carr; (2) trees, other than seeds, of *Populus* L, intended for planting; (3) trees, other than fruit or seeds, of *Eucalyptus* L'Hérit; (4) wood referred to in para (a) or (b) of the definition of 'wood' in art 2(1), where it (a) has been obtained in whole or in part from (i) conifers (*Coniferales*), excluding wood which is bark-free; (ii) *Castanea* Mill, excluding wood which is bark-free; and (b) meets one of the descriptions specified in EC Council Directive 2000/29 (OJ L169, 10.7.2000, p 1) Annex V Pt A s II item 1.10(b); (5) isolated bark of *Castanea* Mill or conifers (*Coniferales*): Plant Health (Forestry) Order 2005, SI 2005/2517, Sch 7 Pt B.

22 Plant Health (Forestry) Order 2005, SI 2005/2517, art 20(6).

23 See PARA 94.

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75. General provisions relating to plant passports.

Any alteration or erasure in a plant passport¹ automatically invalidates that plant passport unless the alteration or erasure is certified by the authorised officer² or the forestry trader³ authorised⁴ to issue the plant passport placing his hand written initials next to the alteration or erasure⁵.

A plant passport relating to any relevant material is to be treated as accompanying that relevant material only if the plant passport is:

- 214 (1) affixed to the relevant material or to the packaging of that material by an authorised officer, the forestry trader authorised to issue it or an inspector⁶; or
- 215 (2) carried in the vehicle transporting that material⁷.

A plant passport, in so far as it comprises an official label⁸, must be affixed in such a way that it cannot be reused⁹.

A person may only issue a replacement plant passport:

- 216 (a) to replace a plant passport issued in respect of a consignment:
17
 - 29. (i) that has been divided up¹⁰;
 - 30. (ii) that has been combined, or part of which has been combined, with another consignment¹¹; or
 - 31. (iii) whose plant health status has changed¹²; and
- 18 217 (b) if he is satisfied that the relevant material to which the replacement plant passport will relate:
19
 - 32. (i) can be identified¹³; and
 - 33. (ii) is free from any risk of infestation by a specified¹⁴ tree pest¹⁵.
- 20

1 As to the meaning of 'plant passport' see PARA 65 note 13.

2 As to the meaning of 'authorised officer' see PARA 65 note 13.

3 'Forestry trader' means: (1) an importer of relevant material; (2) a producer of relevant material; (3) a person in charge of premises used for the storage, aggregation or dispatch of consignments of relevant material; or (4) a person who in the course of a trade or business divides up or combines consignments of relevant material: Plant Health (Forestry) Order 2005, SI 2005/2517, art 2(1). As to the meaning of 'importer' see PARA 67 note 9; as to the meaning of 'relevant material' see PARA 63 note 3; as to the meaning of 'producer' see PARA 74 note 19; as to the meaning of 'premises' see PARA 65 note 13; and as to the meaning of 'consignment' see PARA 63 note 13.

4 Ie authorised under the Plant Health (Forestry) Order 2005, SI 2005/2517, art 28: see PARA 80.

5 Plant Health (Forestry) Order 2005, SI 2005/2517, art 23(1).

- 6 Plant Health (Forestry) Order 2005, SI 2005/2517, art 23(2)(a). As to the meaning of 'inspector' see PARA 67 note 9.
- 7 Plant Health (Forestry) Order 2005, SI 2005/2517, art 23(2)(b).
- 8 As to the meaning of 'official label' see PARA 65 note 13.
- 9 Plant Health (Forestry) Order 2005, SI 2005/2517, art 23(3). Contravention of art 23(3), (4) is an offence: see PARA 94.
- 10 Plant Health (Forestry) Order 2005, SI 2005/2517, art 23(4)(a)(i). See note 9.
- 11 Plant Health (Forestry) Order 2005, SI 2005/2517, art 23(4)(a)(ii). See note 9.
- 12 Plant Health (Forestry) Order 2005, SI 2005/2517, art 23(4)(a)(iii). See note 9.
- 13 Plant Health (Forestry) Order 2005, SI 2005/2517, art 23(4)(b)(i). See note 9.
- 14 Is a tree pest specified in either the Plant Health (Forestry) Order 2005, SI 2005/2517, Sch 1 or Sch 2: see PARA 63. As to the meaning of 'tree pest' see PARA 63 note 2.
- 15 Plant Health (Forestry) Order 2005, SI 2005/2517, art 23(4)(b)(ii). See note 9.

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(B) CONTROL OF PHYTOPHTHORA RAMORUM

76. Movement of susceptible trees.

Subject to certain exceptions¹, where a susceptible tree² originating in the United States of America has been imported into Great Britain³, no person must move that susceptible tree⁴:

- 218 (1) within Great Britain⁵;
- 219 (2) to another part of the United Kingdom⁶;
- 220 (3) to the Isle of Man or the Channel Islands⁷; or
- 221 (4) to another member state⁸,

unless it is accompanied by a plant passport⁹.

¹ See subject to the Plant Health (Forestry) (*Phytophthora ramorum*) (Great Britain) Order 2004, SI 2004/3213, art 5(2) (see note 4) and art 9 (see PARA 89).

² As to the meaning of 'susceptible tree' see PARA 71 note 5.

³ As to the meaning of 'Great Britain' see PARA 2 note 2.

⁴ These provisions do not apply in the case of movement of a susceptible tree within Great Britain where such movement is in compliance with a notice served under the Plant Health (Forestry) (*Phytophthora ramorum*) (Great Britain) Order 2004, SI 2004/3213, art 10 (see PARA 86): art 5(2). Failure to comply with the prohibitions contained in art 5(1) is an offence: see PARA 95.

⁵ Plant Health (Forestry) (*Phytophthora ramorum*) (Great Britain) Order 2004, SI 2004/3213, art 5(1)(a).

⁶ Plant Health (Forestry) (*Phytophthora ramorum*) (Great Britain) Order 2004, SI 2004/3213, art 5(1)(b). As to the meaning of 'United Kingdom' see PARA 2 note 2.

⁷ Plant Health (Forestry) (*Phytophthora ramorum*) (Great Britain) Order 2004, SI 2004/3213, art 5(1)(c).

⁸ Plant Health (Forestry) (*Phytophthora ramorum*) (Great Britain) Order 2004, SI 2004/3213, art 5(1)(d).

⁹ Plant Health (Forestry) (*Phytophthora ramorum*) (Great Britain) Order 2004, SI 2004/3213, art 5(1). As to plant passports see PARA 74 (the relevant provisions of the Plant Health (Forestry) Order 2005, SI 2005/2517, are applied by the Plant Health (Forestry) (*Phytophthora ramorum*) (Great Britain) Order 2004, SI 2004/3213, art 6(1)).

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C. REGISTRATION OF FORESTRY TRADERS AND AUTHORITY TO ISSUE PLANT PASSPORTS

77. Register of forestry traders.

The Forestry Commissioners¹ must maintain a register listing the following particulars with respect to each forestry trader² who meets the prescribed requirements³:

- 222 (1) the name of the forestry trader⁴;
- 223 (2) the name of the person responsible for making the application where that person is not the forestry trader⁵;
- 224 (3) the trading name of the forestry trader where that name is different from that of the forestry trader⁶;
- 225 (4) details of those activities to which the relevant statutory provisions⁷ apply which the forestry trader undertakes or intends to undertake⁸;
- 226 (5) the address of the premises⁹ at which the forestry trader undertakes or intends to undertake the activities referred to in head (4) above¹⁰; and
- 227 (6) a registration number unique to the forestry trader¹¹.

The register so maintained must be open to inspection by the European Commission¹².

1 As to the Forestry Commissioners see PARA 34 et seq.

2 As to the meaning of 'forestry trader' see PARA 75 note 3.

3 I.e. the requirements of the Plant Health (Forestry) Order 2005, SI 2005/2517, Pt 4 (arts 24-28): see PARA 77 et seq.

4 Plant Health (Forestry) Order 2005, SI 2005/2517, art 24(1)(a).

5 Plant Health (Forestry) Order 2005, SI 2005/2517, art 24(1)(b).

6 Plant Health (Forestry) Order 2005, SI 2005/2517, art 24(1)(c).

7 I.e. the Plant Health (Forestry) Order 2005, SI 2005/2517: see PARAS 63 et seq.

8 Plant Health (Forestry) Order 2005, SI 2005/2517, art 24(1)(d).

9 As to the meaning of 'premises' see PARA 65 note 13.

10 Plant Health (Forestry) Order 2005, SI 2005/2517, art 24(1)(e).

11 Plant Health (Forestry) Order 2005, SI 2005/2517, art 24(1)(f).

12 Plant Health (Forestry) Order 2005, SI 2005/2517, art 24(2).

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78. Obligation to register; registration requirements.

No forestry trader¹ may² engage in any activity to which the statutory provisions³ apply unless he is registered⁴ in respect of the activity and the premises⁵ at which it takes place⁶; but this requirement for a forestry trader to be registered does not apply to a producer⁷ whose entire production and sale of relevant material⁸ is intended for final use by persons who are not involved in tree production in the course of a trade or business⁹.

An application for registration must be made in writing to the Forestry Commissioners¹⁰ and must be in such form and contain such information as the Commissioners may from time to time reasonably require to enable them to register the trader in respect of the activity and premises in relation to which the application is made¹¹. If, after a forestry trader has so applied to the Commissioners to be registered but before registration has taken place, there is any change in his circumstances recorded in the application, he must notify the Commissioners immediately in writing of any such change¹².

The Commissioners must¹³ register a forestry trader who meets the prescribed requirements¹⁴ in respect of the activity and premises in relation to which he has applied to be registered and must notify the trader when registration has taken place¹⁵. They must, however, only register a forestry trader in respect of an activity or premises if they are satisfied that he is able and willing to comply with the specified¹⁶ conditions¹⁷.

Every registered forestry trader must notify the Commissioners immediately in writing of any change in the particulars listed in the register with respect to him¹⁸.

1 As to the meaning of 'forestry trader' see PARA 75 note 3.

2 I.e. subject to the Plant Health (Forestry) Order 2005, SI 2005/2517, art 25(2); see the text and notes 7-9.

3 I.e. the Plant Health (Forestry) Order 2005, SI 2005/2517: see PARAS 63 et seq.

4 'Registered', in relation to a forestry trader, means a trader whose particulars are listed in the register, and 'registration' is to be construed accordingly: Plant Health (Forestry) Order 2005, SI 2005/2517, art 2(1). 'Register' means the register of forestry traders maintained under art 24(1) (see PARA 77): art 2(1).

5 As to the meaning of 'premises' see PARA 65 note 13.

6 Plant Health (Forestry) Order 2005, SI 2005/2517, art 25(1). Contravention of art 25(1) is an offence: see PARA 94. Entries on the register kept under the Plant Health (Forestry) (Great Britain) Order 1993, SI 1993/1283, art 15 (revoked) on 30 September 2005 (i.e. the day before the date of the coming into force of the Plant Health (Forestry) Order 2005, SI 2005/2517: see art 1) remain in effect, subject to the provisions of Pt 4 (arts 24-28) (see PARAS 77, 79-80), for the purposes of the 2005 Order as if entered on the register maintained under art 24(1): art 25(3).

7 As to the meaning of 'producer' see PARA 74 note 19.

8 As to the meaning of 'relevant material' see PARA 63 note 3.

9 Plant Health (Forestry) Order 2005, SI 2005/2517, art 25(2).

10 As to the Forestry Commissioners see PARA 34 et seq.

11 Plant Health (Forestry) Order 2005, SI 2005/2517, art 26(1).

12 Plant Health (Forestry) Order 2005, SI 2005/2517, art 26(2). Contravention of art 26(2) is an offence: see PARA 94.

13 Is subject to the Plant Health (Forestry) Order 2005, SI 2005/2517, art 26(5): see the text and notes 16-17.

14 Is the requirements of the Plant Health (Forestry) Order 2005, SI 2005/2517, art 26.

15 Plant Health (Forestry) Order 2005, SI 2005/2517, art 26(4).

16 Is the conditions specified in the Plant Health (Forestry) Order 2005, SI 2005/2517, art 27(1): see PARA 79.

17 Plant Health (Forestry) Order 2005, SI 2005/2517, art 26(5).

18 Plant Health (Forestry) Order 2005, SI 2005/2517, art 26(3). Contravention of art 26(3) is an offence: see PARA 94.

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79. Conditions for maintaining registration as a forestry trader.

A registered forestry trader¹ must in relation to the activities and premises² to which his registration relates comply with the following conditions:

- 228 (1) he must keep an accurate plan of the premises³;
- 229 (2) he must keep a record of relevant material⁴ purchased by him or brought onto the premises for storage, planting⁵ or production on those premises, and of relevant material under production on or dispatched from those premises⁶;
- 230 (3) he must keep:
- 21 34. (a) all documents relating to the records kept under head (2) above for one year from the date he created or received them⁷; and
- 35. (b) if he is the final user of relevant material, any plant passport⁸ which accompanies the relevant material⁹ for one year from the date he received it¹⁰;
- 22 231 (4) he must designate an individual, whether himself or another, who is technically experienced in relation to the activities carried out on the premises and related plant health matters affecting the premises who must be available to liaise with the Forestry Commissioners¹¹ in relation to matters arising under the statutory provisions¹²;
- 232 (5) he must examine his premises and relevant material at such times and in a manner specified in guidelines issued from time to time by the Commissioners¹³;
- 233 (6) he must make a declaration at such time and in such form as the Commissioners may from time to time require that he is able and willing to comply with the conditions specified in heads (1) to (5) above¹⁴; and
- 234 (7) he must comply with any other conditions which may be specified by the Commissioners which they consider necessary to enable them to assess the presence of or spread of any tree pest¹⁵ on the premises by reason of the condition of those premises¹⁶.

Where the Commissioners are satisfied that a registered forestry trader has failed to comply with any of the conditions specified in heads (1) to (7) above they may suspend his registration until they are satisfied that he is able and willing to comply with those conditions¹⁷.

1 As to the meaning of 'forestry trader' see PARA 75 note 3; and as to the meaning of 'registered' in relation to such a trader see PARA 78 note 4.

2 As to the meaning of 'premises' see PARA 65 note 13.

3 Plant Health (Forestry) Order 2005, SI 2005/2517, art 27(1)(a). Contravention of art 27(1) is an offence: see PARA 94.

4 As to the meaning of 'relevant material' see PARA 63 note 3.

5 As to the meaning of 'planting' see PARA 74 note 5.

6 Plant Health (Forestry) Order 2005, SI 2005/2517, art 27(1)(b). see note 3.

7 Plant Health (Forestry) Order 2005, SI 2005/2517, art 27(1)(c)(i) (art 27(1)(c) substituted by SI 2006/2696). See note 3.

8 As to the meaning of 'plant passport' see PARA 65 note 13.

9 le in accordance with the Plant Health (Forestry) Order 2005, SI 2005/2517, art 20: see PARA 74.

10 Plant Health (Forestry) Order 2005, SI 2005/2517, art 27(1)(c)(ii) (as substituted: see note 7). See note 3.

11 As to the Forestry Commissioners see PARA 34 et seq.

12 Plant Health (Forestry) Order 2005, SI 2005/2517, art 27(1)(d). The 'statutory provision' for this purpose is the Plant Health (Forestry) Order 2005, SI 2005/2517: see PARAS 63 et seq, 80 et seq. See note 3.

13 Plant Health (Forestry) Order 2005, SI 2005/2517, art 27(1)(e). See note 3.

14 Plant Health (Forestry) Order 2005, SI 2005/2517, art 27(1)(f). See note 3.

15 As to the meaning of 'tree pest' see PARA 63 note 2.

16 Plant Health (Forestry) Order 2005, SI 2005/2517, art 27(1)(g). See note 3.

17 Plant Health (Forestry) Order 2005, SI 2005/2517, art 27(2).

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80. Authority to issue plant passports.

Where a registered forestry trader¹ wishes to issue plant passports² in relation to any relevant material³ to be moved from his premises⁴ he must apply to the Forestry Commissioners⁵ for the authority to do so⁶. Such an application must be in writing, must give such notice as the Commissioners may reasonably specify to allow them to undertake any necessary examination of the premises to which the application relates and of any relevant material there and must contain such particulars in relation to the relevant material produced, grown, stored or otherwise present on those premises as the Commissioners may from time to time reasonably require⁷.

The Commissioners may grant an authority⁸ only if, having regard to any examination of the premises to which the application relates and of any relevant material there, they are satisfied that the premises and relevant material are free from any relevant organisms⁹ and, where any requirements are specified under the statutory provisions¹⁰ in relation to the relevant material, those requirements have been complied with¹¹.

The Commissioners' authority to issue plant passports must be given in writing and may be granted subject to such conditions as they consider appropriate to ensure that the statutory requirements¹² are complied with, including a condition limiting any territories in which such plant passports are to be valid¹³.

The Commissioners may suspend the operation of an authority to issue plant passports entirely or in relation to specified premises or relevant material if, having regard to any examination of any premises of the registered forestry trader and any relevant material there, they are not satisfied that:

- 235 (1) the premises or the relevant material are free from any relevant organisms¹⁴;
or
- 236 (2) where any requirements are specified¹⁵ in relation to the relevant material, those requirements have been complied with¹⁶.

The Commissioners may also suspend the operation of, or may vary to the extent they consider necessary, an authority to issue plant passports if they are satisfied that the registered forestry trader has:

- 237 (a) failed to comply with any of the specified conditions¹⁷ for maintaining registration¹⁸;
- 238 (b) failed to notify them¹⁹ of any change in the particulars listed in the register²⁰ with respect to him²¹;
- 239 (c) failed to comply with a requirement in a notice served on the trader²² by an inspector²³; or
- 240 (d) failed to comply with any conditions in the authority issued²⁴ by them²⁵.

A forestry trader:

- 241 (i) who holds the authority of the Commissioners to issue plant passports under these provisions may issue a plant passport required under the provisions relating to *Phytophthora ramorum*²⁶; or
- 242 (ii) who does not hold that authority may apply to the Commissioners for such authority as if he were applying under these provisions and *Phytophthora ramorum* were a relevant organism for the purposes of these provisions²⁷.

A forestry trader seeking authority to issue plant passports under head (ii) above who is not listed in the register of forestry traders must apply to the Commissioners for listing in the register²⁸.

1 As to the meaning of 'forestry trader' see PARA 75 note 3; and as to the meaning of 'registered' in relation to such a trader see PARA 78 note 4.

2 As to the meaning of 'plant passport' see PARA 65 note 13.

3 As to the meaning of 'relevant material' see PARA 63 note 3.

4 As to the meaning of 'premises' see PARA 65 note 13.

5 As to the Forestry Commissioners see PARA 34 et seq.

6 Plant Health (Forestry) Order 2005, SI 2005/2517, art 28(1).

7 Plant Health (Forestry) Order 2005, SI 2005/2517, art 28(2). A fee is payable to the Commissioners for an inspection related to an authority to issue plant passports under art 28: see the Plant Health (Fees) (Forestry) Regulations 2006, SI 2006/2697, regs 2, 3(1), (2), Sch 1. For these purposes, 'plant passport' means a label and, where appropriate, an accompanying document that meets the relevant requirements set out in the Plant Health (Forestry) Order 2005, SI 2005/2517, Sch 9 (see PARA 65 note 13), issued by or with the authority of the Commissioners, and includes a replacement plant passport: Plant Health (Fees) (Forestry) Regulations 2006, SI 2006/2697, reg 2.

8 Ie under the Plant Health (Forestry) Order 2005, SI 2005/2517, art 28(1): see the text and notes 1-6.

9 Plant Health (Forestry) Order 2005, SI 2005/2517, art 28(3)(a). For these purposes 'relevant organism' means: (1) any tree pest specified in Sch 1 (see PARA 63); or (2) in relation to relevant material of a description specified in Sch 2 (see PARA 63), any tree pest of a description specified in Sch 2 opposite the reference to that relevant material: art 28(7).

10 Ie the Plant Health (Forestry) Order 2005, SI 2005/2517: see PARAS 63 et seq, 81 et seq.

11 Plant Health (Forestry) Order 2005, SI 2005/2517, art 28(3).

12 Ie relevant requirements of the Plant Health (Forestry) Order 2005, SI 2005/2517.

13 Plant Health (Forestry) Order 2005, SI 2005/2517, art 28(4).

14 Plant Health (Forestry) Order 2005, SI 2005/2517, art 28(5)(a).

15 Ie under the Plant Health (Forestry) Order 2005, SI 2005/2517.

16 Plant Health (Forestry) Order 2005, SI 2005/2517, art 28(5)(b).

17 Ie the conditions specified in the Plant Health (Forestry) Order 2005, SI 2005/2517, art 27(1): see PARA 79.

18 Plant Health (Forestry) Order 2005, SI 2005/2517, art 28(6)(a).

19 Ie in accordance with the Plant Health (Forestry) Order 2005, SI 2005/2517, art 26(3): see PARA 78.

20 As to the register see PARA 77.

21 Plant Health (Forestry) Order 2005, SI 2005/2517, art 28(6)(b).

22 Ie a notice served under the Plant Health (Forestry) Order 2005, SI 2005/2517, art 31: see PARA 83.

23 Plant Health (Forestry) Order 2005, SI 2005/2517, art 28(6)(c). As to the meaning of 'inspector' see PARA 67 note 9.

24 le issued under the Plant Health (Forestry) Order 2005, SI 2005/2517, art 28(4): see the text and notes 12-13.

25 Plant Health (Forestry) Order 2005, SI 2005/2517, art 28(6)(d).

26 Plant Health (Forestry) (*Phytophthora ramorum*) (Great Britain) Order 2004, SI 2004/3213, art 6(2)(a). As to the meaning of '*Phytophthora ramorum*' see PARA 71 note 2. The provisions relating to *Phytophthora ramorum* are the Plant Health (Forestry) (*Phytophthora ramorum*) (Great Britain) Order 2004, SI 2004/3213: see PARAS 71, 76, 80, 86-87, 89, 95.

27 Plant Health (Forestry) (*Phytophthora ramorum*) (Great Britain) Order 2004, SI 2004/3213, art 6(2)(b).

28 Plant Health (Forestry) (*Phytophthora ramorum*) (Great Britain) Order 2004, SI 2004/3213, art 6(3). The Commissioners must treat the application as if the controls in the Plant Health (Forestry) (*Phytophthora ramorum*) (Great Britain) Order 2004, SI 2004/3213, were controls of the Plant Health (Forestry) Order 2005, SI 2005/2517: Plant Health (Forestry) (*Phytophthora ramorum*) (Great Britain) Order 2004, SI 2004/3213, art 6(3).

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D. SWISS TRADE AND SWISS PLANT PASSPORTS

81. Swiss trade and Swiss plant passports.

Particular provision is made¹ with regard to Swiss trade and Swiss plant passports² as follows:

- 243 (1) where certain relevant material³ has been consigned directly from Switzerland to Great Britain⁴, any statutory requirements⁵ for that relevant material to be accompanied by a phytosanitary certificate⁶ are to be deemed to be satisfied by its being accompanied by a Swiss plant passport⁷;
- 244 (2) any such requirements as are mentioned in head (1) above for relevant material to be accompanied by a phytosanitary certificate do not apply to certain other relevant material⁸ that has been introduced into Great Britain from Switzerland⁹.

The statutory requirements relating to advance notification of landing¹⁰ and the prohibition on the removal of relevant materials from an area of plant health control¹¹ do not apply to relevant material which is accompanied by a Swiss plant passport pursuant to head (1) above or which is of a description referred to in head (2) above¹².

Where relevant material such as is referred to in head (1) above¹³ is introduced into Great Britain from Switzerland via another part of the European Community any statutory requirements¹⁴ for that relevant material to be accompanied by a plant passport¹⁵ are to be deemed to be satisfied by its being accompanied by a Swiss plant passport¹⁶.

1 ie by the Plant Health (Forestry) Order 2005, SI 2005/2517, Pt 5 (art 29): see the text and notes 3-16.

2 As to the meaning of 'Swiss plant passport' see PARA 65 note 13.

3 ie relevant material listed in the Plant Health (Forestry) Order 2005, SI 2005/2517, Sch 8 Pt A. That material is as follows: (1) wood referred to in para (a) or (b) of the definition of 'wood' in art 2(1) (see PARA 63 note 2), where it: (a) has been obtained in whole or in part from *Platanus* L, including wood which has not kept its natural round surface; and (b) meets one of the descriptions specified in the Agriculture Agreement Annex 4 Pt A Appendix 1 item 1.6(b) (ie the Agreement between the European Community and the Swiss Confederation on trade in agricultural products attached to the joint Council and Commission Decision on the conclusion of seven agreements with the Swiss Confederation as amended, in so far as the amendments are relevant for these purposes, by EC Commission Decision 2004/278 (OJ L87, 25.3.2004, p 31) and EC Commission Decision 2005/260 (OJ L78, 24.3.2005, p 50)); (2) trees, other than seeds, of *Abies* Mill, *Castanea* Mill, *Larix* Mill, *Picea* A Dietr, *Pinus* L, *Platanus* L, *Populus* L, *Pseudotsuga* Carr, *Quercus* L or *Tsuga* Carr, intended for planting and produced by producers authorised to produce for sale to persons engaged in tree production in the course of a trade or business, other than those trees which are prepared and ready for sale to the final customer, and for which it is guaranteed by a person authorised by Swiss legislation to give such guarantee, that the production thereof is clearly separate from that of other products: Plant Health (Forestry) Order 2005, SI 2005/2517, Sch 8 Pt A. As to the meaning of 'relevant material' see PARA 63 note 3; as to the meanings of 'trees intended for planting' and 'planting' see PARA 74 note 5; and as to the meaning of 'producer' see PARA 74 note 19.

4 As to the meaning of 'Great Britain' see PARA 2 note 2.

5 ie any requirements in the Plant Health (Forestry) Order 2005, SI 2005/2517, art 7: see PARA 65.

6 As to the meaning of 'phytosanitary certificate' see PARA 63 note 13.

7 Plant Health (Forestry) Order 2005, SI 2005/2517, art 29(1).

8 le where that material is listed in the Plant Health (Forestry) Order 2005, SI 2005/2517, Sch 8 Pt B but not in Sch 8 Pt A. The relevant material listed in Sch 8 Pt B is as follows (Sch 8 Pt B):

- 69 (1) trees, other than seeds, intended for planting;
 - 70 (2) parts of trees, other than fruit or seeds, of *Acer saccharum* Marsh, originating in the USA or Canada, conifers (*Coniferales*), *Populus* L or *Quercus* L;
 - 71 (3) wood referred to in para (a) or (b) of the definition of 'wood' in art 2(1), where it:
36. (a) has been obtained in whole or in part from one of the following orders, genera or species, except wood packaging material, other than in the form of raw wood of 6 mm thickness or less or wood that has undergone a manufacturing process involving glue, heat or pressure or a combination thereof, originating in a country outside the European Community or Switzerland, ie (i) *Quercus* L, including wood which has not kept its natural round surface, originating in the USA, except wood in the form of casks, barrels, vats, tubs or other coopers' products or parts thereof including staves and where there is documented evidence that the wood has been processed or manufactured using a heat treatment to achieve a minimum temperature of 176°C for 20 minutes; (ii) *Platanus* L, including wood which has not kept its natural round surface, originating in the USA or Armenia; (iii) *Populus* L, including wood which has not kept its natural round surface, originating in any country of the American continent; (iv) *Acer saccharum* Marsh, including wood which has not kept its natural round surface, originating in the USA or Canada; or (v) conifers (*Coniferales*), including wood which has not kept its natural round surface, originating in any country outside Europe, Kazakhstan, Russia or Turkey; and
- 36
37. (b) meets one of the descriptions specified in the Agriculture Agreement Annex 4 Pt B Appendix 1 item 6(b); or
- 37
38. (c) is in the form of (i) wood packaging material, other than in the form of raw wood of 6 mm thickness or less or wood that has undergone a manufacturing process involving glue, heat or pressure or a combination thereof; or (ii) dunnage, including that which has not kept its natural round surface, other than in the form of raw wood of 6 mm thickness or less or wood that has undergone a manufacturing process involving glue, heat or pressure or a combination thereof;
- 38
- 72 (4) soil or growing medium, which consists in whole or in part of soil or solid organic substances such as parts of plants or humus, including peat or bark, other than that composed entirely of peat;
 - 73 (5) soil or growing medium attached to or appearing to have been on contact with trees, consisting in whole or in part of material specified in head (4) above or consisting in part of any solid inorganic substance, intended to sustain the vitality of the trees, originating in (a) Belarus, Georgia, Moldova, Russia, Turkey or the Ukraine; or (b) any country outside Europe, other than Algeria, Egypt, Israel, Libya, Morocco or Tunisia;
 - 74 (6) isolated bark of conifers (*Coniferales*) originating in any country outside Europe.

As to the meanings of 'fruit', 'wood packing material' and 'dunnage' see PARA 63 note 2; as to the meaning of 'isolated bark' see PARA 63 note 3; and as to the meaning of 'European Community' for these purposes see PARA 63 note 12.

9 Plant Health (Forestry) Order 2005, SI 2005/2517, art 29(2).

10 le the requirements in the Plant Health (Forestry) Order 2005, SI 2005/2517, art 6: see PARA 64.

11 le the requirements in the Plant Health (Forestry) Order 2005, SI 2005/2517, art 10: see PARA 68.

12 Plant Health (Forestry) Order 2005, SI 2005/2517, art 29(3).

13 le relevant material listed in the Plant Health (Forestry) Order 2005, SI 2005/2517, Sch 8 Pt A: see note 3.

14 le any requirements in the Plant Health (Forestry) Order 2005, SI 2005/2517, Pt 3 (arts 18-23): see PARAS 72-75.

15 As to the meaning of 'plant passport' see PARA 65 note 13.

16 Plant Health (Forestry) Order 2005, SI 2005/2517, art 29(4).

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E. MEASURES TO CONTROL THE LANDING OF RELEVANT MATERIAL AND PREVENT THE SPREAD OF TREE PESTS

(A) IN GENERAL

82. Examination, sampling and marking.

Subject to the necessity of obtaining a warrant in the case of premises used as a dwelling¹, an inspector² has a right on producing his authority, if so requested, at all reasonable times to enter any premises³ for the purpose of enforcing the statutory provisions⁴ and in particular for the purpose of:

- 245 (1) checking compliance with any provision of the applicable statutory instrument⁵; or
- 246 (2) carrying out an examination of a forestry trader's⁶ premises or of relevant material⁷ or documents or records on such premises for any purpose in connection with the granting or suspending of any authority⁸ to issue a plant passport⁹.

An inspector entering premises by virtue of this power, or of a warrant granted in the case of a dwelling¹⁰, may:

- 247 (a) examine, photograph or mark any part of the premises or any object on the premises¹¹;
- 248 (b) take samples of or from any tree pest¹² or relevant material or from any container or package, or any material which has been or may have been in contact with such pest or relevant material¹³; and
- 249 (c) inspect or make copies of any documents or records, in whatever form they may be held, relating to the production of or trade in any relevant material¹⁴,

and may take with him such other persons, including representatives of the European Commission, and such equipment and vehicles as he considers necessary¹⁵.

An inspector may:

- 250 (i) for the purpose of exercising any of his powers under heads (a) to (c) above, open, or authorise any person to open on his behalf, any container or package or require the owner or any person in charge of any container or package to open it, in such manner as the inspector may specify¹⁶;
- 251 (ii) so far as is necessary to enable him to exercise any of the powers conferred by heads (a) to (c) above, prohibit entirely or to such extent as he may specify the movement, treatment or destruction of any tree pest or relevant material, container or package, or any material which may have been in contact with such pest or relevant material¹⁷;
- 252 (iii) where any such record or document as is mentioned in head (c) above is kept by means of a computer, have access to, and inspect and check the operation of, any computer and any associated apparatus or material which is or has been in

- use in connection with the record or document and require any person having charge of, or otherwise concerned with the operation of, the computer, apparatus or material to afford him such assistance as he may reasonably require¹⁸;
- 253 (iv) destroy or otherwise dispose of any sample taken under head (b) above where that sample is no longer required¹⁹.

1 Ie subject to the Plant Health (Forestry) Order 2005, SI 2005/2517, art 37: see note 3.

2 As to the meaning of 'inspector' see PARA 67 note 9.

3 As to the meaning of 'premises' see PARA 65 note 13. The power to enter premises so conferred, and the right to enter premises conferred by arts 32, 36 (see PARAS 84-85) may be exercised by an inspector to enter premises used wholly or mainly as a dwelling only if he has been granted a warrant by a justice of the peace: Plant Health (Forestry) Order 2005, SI 2005/2517, art 37(1)(a). A justice of the peace may grant such a warrant only if he is satisfied: (1) that admission to any premises has been refused, or is likely to be refused, or that the case is one of urgency, or that a request for admission might prejudice the purpose of the entry; and (2) that there are reasonable grounds for entry under art 30 (see the text and notes 1-2, 4-19), art 32 or art 36 as the case may be: art 37(2). A warrant so granted remains in force (a) for one month; or (b) until the purpose for which the warrant is granted has been fulfilled, whichever period is the shorter: art 37(3).

4 Ie the provisions of the Plant Health (Forestry) Order 2005, SI 2005/2517: see PARAS 63 et seq, 84 et seq.

5 Plant Health (Forestry) Order 2005, SI 2005/2517, art 30(1)(a). The applicable statutory instrument is the Plant Health (Forestry) Order 2005, SI 2005/2517.

6 As to the meaning of 'forestry trader' see PARA 75 note 3.

7 As to the meaning of 'relevant material' see PARA 63 note 3.

8 Ie any authority under the Plant Health (Forestry) Order 2005, SI 2005/2517, art 28: see PARA 80.

9 Plant Health (Forestry) Order 2005, SI 2005/2517, art 30(1)(b). As to the meaning of 'plant passport' see PARA 65 note 13.

10 Ie a warrant granted under the Plant Health (Forestry) Order 2005, SI 2005/2517, art 37: see note 3.

11 Plant Health (Forestry) Order 2005, SI 2005/2517, art 30(2)(a).

12 As to the meaning of 'tree pest' see PARA 63 note 2.

13 Plant Health (Forestry) Order 2005, SI 2005/2517, art 30(2)(b).

14 Plant Health (Forestry) Order 2005, SI 2005/2517, art 30(2)(c).

15 Plant Health (Forestry) Order 2005, SI 2005/2517, art 30(7). Any such other persons may, whether or not accompanied by the inspector and on production, if so requested, of their authority given in that behalf by the Forestry Commissioners, remain on and from time to time re-enter the premises with any equipment or vehicles that person considers necessary, and carry out such work in such manner as the inspector may direct: art 30(7). As to the Forestry Commissioners see PARA 34 et seq.

16 Plant Health (Forestry) Order 2005, SI 2005/2517, art 30(3).

17 Plant Health (Forestry) Order 2005, SI 2005/2517, art 30(4).

18 Plant Health (Forestry) Order 2005, SI 2005/2517, art 30(5).

19 Plant Health (Forestry) Order 2005, SI 2005/2517, art 30(6).

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83. Actions which may be required by an inspector.

If an inspector¹ has reasonable grounds for suspecting that any tree pest² or relevant material³ is likely to be, or has been, landed⁴ in Great Britain⁵ in contravention of the statutory provisions⁶ he may serve a notice in writing in accordance with the following provisions⁷. An inspector may so serve a notice on:

- 254 (1) a forestry trader⁸ or other person who is in possession of or in any way entitled to the custody or control of the tree pest or relevant material which has been landed⁹; or
- 255 (2) any person in charge of the premises¹⁰ from which any tree pest or relevant material is likely to be or has been landed¹¹.

Such a notice may:

- 256 (a) prohibit the landing of any tree pest or relevant material¹²;
- 257 (b) specify the manner in which the landing is to be carried out and the precautions which are to be taken during and subsequent to the landing¹³;
- 258 (c) require any tree pest or relevant material to be treated, re-exported, destroyed or otherwise disposed of in such manner and within such reasonable time as may be specified in the notice¹⁴;
- 259 (d) prohibit the removal of any tree pest or relevant material from premises specified in the notice for such period as may be so specified and, where appropriate, impose such other prohibitions as appear to the inspector to be necessary to prevent the introduction or spread of any tree pest¹⁵;
- 260 (e) require the removal of any tree pest or relevant material from premises specified in the notice in such manner and within such reasonable time as may be so specified¹⁶; and
- 261 (f) require the taking of such other steps, specified in the notice, as appear to the inspector to be necessary to prevent the introduction or spread of any tree pest in such a manner and within such reasonable time as may be specified in the notice¹⁷.

If an inspector has reasonable grounds for suspecting that there is present or is likely to be present on any premises any specified tree pest¹⁸ or any specified relevant material¹⁹, he may by notice²⁰ in writing served on the occupier or other person in charge of the premises or such tree pest or relevant material:

- 262 (i) require any tree pest or relevant material to be treated, destroyed or otherwise disposed of in such manner and within such reasonable time as may be specified in the notice²¹;
- 263 (ii) prohibit the removal of any tree pest or relevant material from premises specified in the notice for such period as may be so specified and, where appropriate, impose such other prohibitions as appear to the inspector to be necessary to prevent the spread of any tree pest²²;

- 264 (iii) require the removal of any tree pest or relevant material to premises specified in the notice in such manner and within such reasonable time as may be so specified²³; or
- 265 (iv) require the taking of such other steps, specified in the notice, as appear to the inspector to be necessary to prevent the spread of any tree pest in such manner and within such reasonable time as may be specified in the notice²⁴.

If an inspector has reasonable grounds for believing that it is necessary for the purpose of preventing the spread of or ensuring the eradication of any tree pest from the premises mentioned above²⁵, he may by notice in writing served on the occupier or other person in charge of any other premises impose such prohibitions and require the taking of such reasonable steps, specified in the notice, as appear to him to be necessary for that purpose, such steps to be taken in such manner and in such reasonable time as may be specified in the notice²⁶.

Any treatment, re-export, destruction or disposal required by a notice served under these provisions must be carried out or arranged to be carried out by the person on whom the notice is served to the satisfaction of an inspector from or at a place designated by an inspector and, except with the written authority of an inspector, no tree pest or relevant material to which the notice relates must be moved otherwise than directly from or to such a place²⁷.

1 As to the meaning of 'inspector' see PARA 67 note 9.

2 As to the meaning of 'tree pest' see PARA 63 note 2.

3 As to the meaning of 'relevant material' see PARA 63 note 3.

4 As to the meaning of 'landed' see PARA 63 note 1.

5 As to the meaning of 'Great Britain' see PARA 2 note 2.

6 In contravention of the Plant Health (Forestry) Order 2005, SI 2005/2517: see PARAS 63 et seq, 84 et seq.

7 Plant Health (Forestry) Order 2005, SI 2005/2517, art 31(1). A notice served under art 31(1) or (2) may specify one or more requirements or alternative requirements: art 33(1). As to notices see further PARA 85.

The person on whom a remedial notice (ie a notice served under the Plant Health (Forestry) Order 2005, SI 2005/2517, art 31(1) or (4) or under art 33(3) (see PARA 85)) is served or who is given notice under art 32(1) (see PARA 84) must pay to the Commissioners the fee specified in the Plant Health (Fees) (Forestry) Regulations 2006, SI 2006/2697, Sch 5 for remedial work in connection with a consignment to which reg 3(6) applies: reg 3(1), (5). Regulation 3(6) applies to a consignment of (or a consignment which an inspector reasonably suspects to be): (1) isolated bark of a type listed in the Plant Health (Forestry) Order 2005, SI 2005/2517, Sch 5 Pt A para 3 or Sch 5 Pt B para 3 (see PARA 64); or (2) wood of a type listed in Sch 5 Pt A para 4 or Sch 5 Pt B para 1 (see PARA 64), other than wood packaging material which is actually in use in the transport of objects of all kinds, to which the provisions of Pt 2 (arts 3-17) (see PARA 63 et seq) apply: Plant Health (Fees) (Forestry) Regulations 2006, SI 2006/2697, reg 3(6). 'Remedial work' means any steps taken by a person for the purposes of complying with a remedial notice or by an inspector under the Plant Health (Forestry) Order 2005, SI 2005/2517, art 32(1) (see PARA 84): Plant Health (Fees) (Forestry) Regulations 2006, SI 2006/2697, reg 2(1). As to the meaning of 'wood packaging material' see PARA 63 note 2 (definition applied by reg 2(2)). 'Consignment' has the same meaning as in EC Council Directive 2000/29 (OJ L169, 10.7.2000, p 1) on protective measures against the introduction into the Community of organisms harmful to plants or plant products and against their spread within the Community, art 2(1)(p): Plant Health (Fees) (Forestry) Regulations 2006, SI 2006/2697, reg 2(1).

8 As to the meaning of 'forestry trader' see PARA 75 note 3.

9 Plant Health (Forestry) Order 2005, SI 2005/2517, art 31(2)(a).

10 As to the meaning of 'premises' see PARA 65 note 13.

11 Plant Health (Forestry) Order 2005, SI 2005/2517, art 31(2)(b); and see note 7. Where a notice is served under art 31(2) or under art 31(4) (see the text and notes 8-11, 18-24) (an 'article 31 notice'), an inspector may,

either in that notice or in a separate notice served on the owner or on such other person as appears to him to be in charge of the premises to which the article 31 notice relates, require the person on whom the notice is served to inform: (1) the Forestry Commissioners of any change in the occupation of the premises to which the article 31 notice relates together with the date of such change and the name of the new occupier; and (2) the new occupier of the premises of the contents of the article 31 notice: art 33(6). As to the Forestry Commissioners see PARA 34 et seq.

12 Plant Health (Forestry) Order 2005, SI 2005/2517, art 31(3)(a).

13 Plant Health (Forestry) Order 2005, SI 2005/2517, art 31(3)(b).

14 Plant Health (Forestry) Order 2005, SI 2005/2517, art 31(3)(c).

15 Plant Health (Forestry) Order 2005, SI 2005/2517, art 31(3)(d).

16 Plant Health (Forestry) Order 2005, SI 2005/2517, art 31(3)(e).

17 Plant Health (Forestry) Order 2005, SI 2005/2517, art 31(3)(f).

18 Ie any tree pest referred to in the Plant Health (Forestry) Order 2005, SI 2005/2517, art 31(5). The tree pests so referred to are: (1) a tree pest of a description specified in Sch 1 (see PARA 63 note 4) or in Sch 2 col 3 (see PARA 63 note 8); (2) any tree pest which is not normally present in Great Britain and in respect of which there is, in the opinion of the inspector, an imminent danger of its spreading or being spread in Great Britain; and (3) any tree pest which is not normally present in another part of the European Community and in respect of which there is, in the opinion of the inspector, an imminent danger of its spreading or being spread to another part of the European Community: art 31(5). As to the meaning of 'European Community' for these purposes see PARA 63 note 12.

19 Ie any relevant material referred to in the Plant Health (Forestry) Order 2005, SI 2005/2517, art 31(6). The relevant material so referred to is: (1) any relevant material which is carrying or is infected with, or which may be carrying or infected with, a tree pest referred to in art 31(5) (see note 18); and (2) any relevant material the landing of which in Great Britain is prohibited under art 5 (see PARA 63) or art 18 (see PARA 72) or the movement of which in Great Britain is prohibited under art 19 (see PARA 73): art 31(6).

20 As to notices see notes 7, 11; and PARA 85.

21 Plant Health (Forestry) Order 2005, SI 2005/2517, art 31(4)(a).

22 Plant Health (Forestry) Order 2005, SI 2005/2517, art 31(4)(b).

23 Plant Health (Forestry) Order 2005, SI 2005/2517, art 31(4)(c).

24 Plant Health (Forestry) Order 2005, SI 2005/2517, art 31(4)(d).

25 Ie the premises mentioned in the Plant Health (Forestry) Order 2005, SI 2005/2517, art 31(4): see the text and notes 18-24.

26 Plant Health (Forestry) Order 2005, SI 2005/2517, art 31(7). As to notices see notes 7, 11; and PARA 85.

27 Plant Health (Forestry) Order 2005, SI 2005/2517, art 33(2).

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84. Actions which may be taken by an inspector.

If an inspector¹ has reasonable grounds for suspecting that there is present or likely to be present on any premises² any specified tree pest³ or any specified relevant material⁴ he may⁵, after giving the occupier or other person in charge of the premises reasonable notice of his intention and upon production if so required of his authority, enter such premises and either on those premises or elsewhere take steps:

266 (1) to destroy any such tree pest and to prevent the spread of any such tree pest⁶; or

267 (2) to destroy or treat any such relevant material⁷.

On so entering any premises an inspector may take with him such persons, including representatives of the European Commission, and such equipment and vehicles as he considers necessary for the purposes of facilitating the exercise of his powers under these provisions⁸. Any person whom an inspector takes with him on to premises in accordance with that power may, whether or not accompanied by an inspector, and upon production if so required of his authority given in that behalf by the Commissioners, remain on the premises and from time to time re-enter the premises with any equipment or vehicles that person considers necessary, and carry out such work in such manner as the inspector may direct⁹.

¹ As to the meaning of 'inspector' see PARA 67 note 9.

² As to the meaning of 'premises' see PARA 65 note 13.

³ I.e. any tree pest referred to in the Plant Health (Forestry) Order 2005, SI 2005/2517, art 32(2). The tree pests so referred to are: (1) a tree pest of a description specified in Sch 1 (see PARA 63 note 4) or in Sch 2 col 3 (see PARA 63 note 8); and (2) any tree pest not normally present in Great Britain and in respect of which there is, in the opinion of the inspector, an imminent danger of its spreading or being spread in Great Britain: art 32(2). As to the meaning of 'tree pest' see PARA 63 note 2; and as to the meaning of 'Great Britain' see PARA 2 note 2.

⁴ I.e. relevant material referred to in the Plant Health (Forestry) Order 2005, SI 2005/2517, art 32(3). The relevant material so referred to is: (1) any relevant material which is carrying or is infected with, or which may be carrying or infected with, a tree pest referred to in art 32(2) (see note 3); and (2) any relevant material not carrying or infected with a tree pest referred to in art 32(2) but in respect of which there is, in the opinion of the inspector, an imminent danger of such a tree pest spreading or being spread: art 32(3). As to the meaning of 'relevant material' see PARA 63 note 3.

⁵ I.e. without prejudice to the Plant Health (Forestry) Order 2005, SI 2005/2517, art 31 (see PARA 83), and subject to art 37 (see PARA 82 note 3).

⁶ Plant Health (Forestry) Order 2005, SI 2005/2517, art 32(1)(a). As to payment of a fee to the Forestry Commissioners for remedial work in connection with certain consignments see PARA 83 note 7; and as to the Commissioners see PARA 34 et seq.

⁷ Plant Health (Forestry) Order 2005, SI 2005/2517, art 32(1)(b). See note 6.

⁸ Plant Health (Forestry) Order 2005, SI 2005/2517, art 32(4).

⁹ Plant Health (Forestry) Order 2005, SI 2005/2517, art 32(5).

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85. Notices.

A notice¹ may be served² on any person:

- 268 (1) by delivering it to him personally³;
- 269 (2) by leaving it for him at his last known place of abode or business⁴; or
- 270 (3) by sending it through the post addressed to him at his last known place of abode or business⁵.

Where such a notice must be served on the occupier or other person in charge of premises⁶, and the last known place of abode or business of that person cannot be ascertained after reasonable inquiry, the notice is to be taken to be served seven days after it has been addressed to 'the occupier' and affixed conspicuously to an object on the premises to which the notice relates⁷.

A notice so served may⁸:

- 271 (a) in the case of a body corporate, other than a limited liability partnership, be served on the secretary or clerk of that body at the address of the registered or principal office⁹ of that body¹⁰;
- 272 (b) in the case of a partnership including a Scottish partnership, other than a limited liability partnership, be served on a partner or person having the control or management of the partnership business at the address of the principal office of the partnership¹¹; or
- 273 (c) in the case of a limited liability partnership, be served on a member of the partnership at the address of the registered or principal office of that partnership¹².

In the case of a registered forestry trader¹³, a notice must be served on the trader either by delivering it to him personally, or by leaving it for him, or sending it through the post addressed to him, at the address of his premises listed in the register¹⁴ or, if more than one such address is registered, any address specified by the trader as his principal address¹⁵.

Any notice served under the statutory provisions concerned with controlling the landing of relevant material and preventing the spread of tree pests¹⁶ may define by reference to a map or plan or otherwise the extent of the premises referred to in the notice¹⁷.

A person on whom a notice¹⁸ has been served must, if so required by an inspector¹⁹, immediately inform the inspector whether the requirements of the notice have been complied with and, if they have been complied with, of the details of the steps taken in order to comply with those requirements²⁰.

An inspector may amend or withdraw a notice served by an inspector by a further notice served on the person on whom the original notice was served or on the person who is the occupier or in charge of the premises in respect of which the further notice is intended to be served²¹. Such a notice may be subject to such conditions, if any, as the inspector considers expedient to impose for the purpose of preventing the introduction or spread of any tree pest²² or re-infection or re-infestation by the tree pest to which the original notice relates²³.

If any person fails to comply with a notice²⁴ then, without prejudice to any proceedings consequent upon such failure, an inspector may²⁵, on production if so required of his authority, at all reasonable times for these purposes enter any premises in which any tree pest or relevant material²⁶ to which the notice relates may be present and take or cause to be taken such steps as appear to him to be necessary either to ensure compliance with the requirements of the notice or to remedy the consequences of the failure to carry them out²⁷. Where an inspector takes any steps pursuant to the above power, the Forestry Commissioners²⁸ may recover all reasonable costs of taking such steps as a debt from the person on whom the notice was served²⁹. An inspector entering any premises under that power may take with him such other persons, including representatives of the European Commission, and such equipment and vehicles as he considers necessary for the purposes of facilitating the exercise of his powers under that power: such other persons, whether or not accompanied by the inspector and on production, if so requested, of their authority given in that behalf by the Commissioners, may remain on the premises and from time to time re-enter the premises with any equipment or vehicles that person considers necessary, and carry out such work and in such manner as the inspector may direct³⁰.

1 le a notice under the Plant Health (Forestry) Order 2005, SI 2005/2517: see PARAS 63 et seq, 88 et seq.

2 le subject to the Plant Health (Forestry) Order 2005, SI 2005/2517, art 34(2), (3), (4): see the text and notes 6-15.

3 Plant Health (Forestry) Order 2005, SI 2005/2517, art 34(1)(a).

4 Plant Health (Forestry) Order 2005, SI 2005/2517, art 34(1)(b).

5 Plant Health (Forestry) Order 2005, SI 2005/2517, art 34(1)(c).

6 As to the meaning of 'premises' see PARA 65 note 13.

7 Plant Health (Forestry) Order 2005, SI 2005/2517, art 34(2).

8 le subject to the Plant Health (Forestry) Order 2005, SI 2005/2517, art 34(4): see the text and notes 13-15.

9 For these purposes, the principal office of a company registered outside the United Kingdom or of a partnership carrying on business outside the United Kingdom is its principal office within the United Kingdom: Plant Health (Forestry) Order 2005, SI 2005/2517, art 34(3). As to the meaning of 'United Kingdom' see PARA 2 note 2.

10 Plant Health (Forestry) Order 2005, SI 2005/2517, art 34(3)(a).

11 Plant Health (Forestry) Order 2005, SI 2005/2517, art 34(3)(b).

12 Plant Health (Forestry) Order 2005, SI 2005/2517, art 34(3)(c).

13 As to the meaning of 'forestry trader' see PARA 75 note 3; and as to the meaning of 'registered' in relation to such a trader see PARA 78 note 4.

14 As to the register see PARA 77.

15 Plant Health (Forestry) Order 2005, SI 2005/2517, art 34(4).

16 le under the Plant Health (Forestry) Order 2005, SI 2005/2517, Pt 6 (arts 30-37): see PARA 82 et seq.

17 Plant Health (Forestry) Order 2005, SI 2005/2517, art 33(5).

18 le a notice under the Plant Health (Forestry) Order 2005, SI 2005/2517.

19 As to the meaning of 'inspector' see PARA 67 note 9.

20 Plant Health (Forestry) Order 2005, SI 2005/2517, art 35. Contravention of art 35 is an offence: see PARA 94.

21 Plant Health (Forestry) Order 2005, SI 2005/2517, art 33(3). As to payment of a fee to the Forestry Commissioners for remedial work in connection with certain consignments where such a notice is served see PARA 83 note 7; and as to the Commissioners see PARA 34 et seq.

22 As to the meaning of 'tree pest' see PARA 63 note 2.

23 Plant Health (Forestry) Order 2005, SI 2005/2517, art 33(4).

24 See note 18.

25 In subject to the Plant Health (Forestry) Order 2005, SI 2005/2517, art 37: see PARA 82.

26 As to the meaning of 'relevant material' see PARA 63 note 3.

27 Plant Health (Forestry) Order 2005, SI 2005/2517, art 36(1).

28 As to the Forestry Commissioners see PARA 34 et seq.

29 Plant Health (Forestry) Order 2005, SI 2005/2517, art 36(3).

30 Plant Health (Forestry) Order 2005, SI 2005/2517, art 36(2).

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(B) CONTROL OF PHYTOPHTHORA RAMORUM

86. Actions which may be required by an inspector.

If an inspector¹ has reasonable grounds:

- 274 (1) for suspecting that *Phytophthora ramorum*² is present or likely to be present on any premises³, he may, for the purposes of enforcing the prohibition on its spread⁴, by notice in writing⁵ served on the occupier or person in charge of those premises or of any susceptible material⁶ present on those premises:
- 23
- 36. (a) require any of the susceptible material to be treated, destroyed or otherwise disposed of in such manner and within such reasonable time as may be specified in the notice⁷;
 - 37. (b) prohibit the removal of such susceptible material from premises specified in the notice or impose such other prohibitions as appear to the inspector to be necessary to prevent the spread of *Phytophthora ramorum*⁸;
 - 38. (c) require the removal of such susceptible material to premises specified in the notice in such manner and within such reasonable time as may be so specified⁹; or
 - 39. (d) require the taking of such other steps, specified in the notice, in such manner and within such reasonable time as may be specified in the notice, as appear to the inspector to be necessary to prevent the spread of *Phytophthora ramorum*¹⁰;
- 24
- 275 (2) for believing that it is necessary for the purpose of preventing the spread of or ensuring the eradication of *Phytophthora ramorum* from any premises, he may by notice in writing served on the occupier or other person in charge of any other premises impose such prohibitions and require the taking of such reasonable steps, specified in the notice, as appear to him to be necessary for that purpose, such steps to be taken in such manner and in such reasonable time as may be specified in the notice¹¹.

For the purposes of carrying out an examination of susceptible material upon its entry to Great Britain¹² an inspector may, by notice in writing served on the consignee of any susceptible material which has been or is to be imported into Great Britain, specify premises and require the removal of that material to those premises in such manner and within such period as may be specified in the notice¹³.

1 As to the meaning of 'inspector' for these purposes see PARA 71 note 15.

2 As to the meaning of '*Phytophthora ramorum*' see PARA 71 note 2.

3 As to the meaning of 'premises' see PARA 65 note 13 (definition applied by the Plant Health (Forestry) (*Phytophthora ramorum*) (Great Britain) Order 2004, SI 2004/3213, art 2).

4 le for the purposes of enforcing the Plant Health (Forestry) (*Phytophthora ramorum*) (Great Britain) Order 2004, SI 2004/3213, art 3(b): see PARA 71.

5 As to notices see PARA 85 (the relevant provisions of the Plant Health (Forestry) Order 2005, SI 2005/2517 are applied by the Plant Health (Forestry) (*Phytophthora ramorum*) (Great Britain) Order 2004, SI 2004/3213, art 12). Failure to comply with the requirements relating to notices is an offence: see PARA 95.

6 As to the meaning of 'susceptible material' see PARA 71 note 19.

7 Plant Health (Forestry) (*Phytophthora ramorum*) (Great Britain) Order 2004, SI 2004/3213, art 10(1)(a).

8 Plant Health (Forestry) (*Phytophthora ramorum*) (Great Britain) Order 2004, SI 2004/3213, art 10(1)(b).

9 Plant Health (Forestry) (*Phytophthora ramorum*) (Great Britain) Order 2004, SI 2004/3213, art 10(1)(c).

10 Plant Health (Forestry) (*Phytophthora ramorum*) (Great Britain) Order 2004, SI 2004/3213, art 10(1)(d).

11 Plant Health (Forestry) (*Phytophthora ramorum*) (Great Britain) Order 2004, SI 2004/3213, art 10(2).

12 As to the meaning of 'Great Britain' see PARA 2 note 2.

13 Plant Health (Forestry) (*Phytophthora ramorum*) (Great Britain) Order 2004, SI 2004/3213, art 10(3).

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87. Actions which may be taken by an inspector.

If an inspector¹ has reasonable grounds for suspecting that *Phytophthora ramorum*² is present or likely to be present on any premises³ he may⁴, after giving the occupier or other person in charge of the premises reasonable notice of his intention and upon production if so required of his authority, enter such premises and either on those premises or elsewhere take steps:

- 276 (1) to destroy or treat in some other way any susceptible material⁵ found on those premises⁶; or
- 277 (2) to destroy and to prevent the spread of *Phytophthora ramorum* found on those premises⁷.

An inspector may⁸, on production if so required of his authority, at all reasonable times for the purpose of ascertaining whether *Phytophthora ramorum* exists on any premises, or for any other applicable statutory purpose⁹, including checking compliance therewith, enter any premises to:

- 278 (a) examine, photograph or mark any part of the premises or any susceptible material or object on the premises¹⁰;
- 279 (b) take samples of any susceptible material or other object and anything which has been or may have been in contact with *Phytophthora ramorum*¹¹; or
- 280 (c) require production of any documents or records, in whatever form they may be held, relating to the production of or trade in any susceptible material and may examine and copy such documents or records¹².

On entering any premises under either of the powers set out above, an inspector may take with him such other persons including, but not limited to, representatives of the European Commission, and such equipment and vehicles as are necessary for the purpose of facilitating the exercise of those powers¹³.

For the purposes of the examinations referred to in heads (a) to (c) above, an inspector may:

- 281 (i) open any container, bundle or other package, authorise any person to open on his behalf any container, bundle or other package or require the owner or any person in charge of any container, bundle or other package to open it in such manner as the inspector may specify¹⁴;
- 282 (ii) so far as it is necessary, prohibit entirely or to such extent as he may indicate the movement of any susceptible material, container, bundle, other package or object by means of which in his opinion *Phytophthora ramorum* may spread¹⁵; and
- 283 (iii) require the occupier or other person in charge of the premises in which the examination is taking place to provide adequate lighting and, where appropriate, suitable areas for inspection¹⁶.

1 As to the meaning of 'inspector' for these purposes see PARA 71 note 15.

- 2 As to the meaning of '*Phytophthora ramorum*' see PARA 71 note 2.
- 3 As to the meaning of 'premises' see PARA 65 note 13 (definition applied by the Plant Health (Forestry) (*Phytophthora ramorum*) (Great Britain) Order 2004, SI 2004/3213, art 2).
- 4 Ie without prejudice to the provisions in the Plant Health (Forestry) (*Phytophthora ramorum*) (Great Britain) Order 2004, SI 2004/3213, art 10 (see PARA 86) and subject to art 11(3). The power to enter premises conferred by art 11(1), (2) (see the text and notes 1-3, 5-12) may be exercised in respect of premises used wholly or mainly as a dwelling only in accordance with a warrant granted under the relevant provisions of the Plant Health (Forestry) Order 2005, SI 2005/2517: Plant Health (Forestry) (*Phytophthora ramorum*) (Great Britain) Order 2004, SI 2004/3213, art 11(3). As to such warrants see PARA 82 note 3.
- 5 As to the meaning of 'susceptible material' see PARA 71 note 19.
- 6 Plant Health (Forestry) (*Phytophthora ramorum*) (Great Britain) Order 2004, SI 2004/3213, art 11(1)(a).
- 7 Plant Health (Forestry) (*Phytophthora ramorum*) (Great Britain) Order 2004, SI 2004/3213, art 11(1)(b).
- 8 Ie subject to the Plant Health (Forestry) (*Phytophthora ramorum*) (Great Britain) Order 2004, SI 2004/3213, art 11(3): see note 4.
- 9 Ie any other purposes of the Plant Health (Forestry) (*Phytophthora ramorum*) (Great Britain) Order 2004, SI 2004/3213: see PARAS 71, 76, 80, 85-86, 89, 95.
- 10 Plant Health (Forestry) (*Phytophthora ramorum*) (Great Britain) Order 2004, SI 2004/3213, art 11(2)(a).
- 11 Plant Health (Forestry) (*Phytophthora ramorum*) (Great Britain) Order 2004, SI 2004/3213, art 11(2)(b).
- 12 Plant Health (Forestry) (*Phytophthora ramorum*) (Great Britain) Order 2004, SI 2004/3213, art 11(2)(c). Where any such document or record as is mentioned in art 11(2)(c) is kept by means of a computer, an inspector may: (1) require access to, and inspect and check the operation of, any computer and any associated apparatus or material which is or has been in use in connection with the documentation or records; and (2) require any person having charge of, or otherwise concerned with the operation of, the computer, apparatus or material, to afford him such assistance as he may reasonably require: art 11(7).
- 13 Plant Health (Forestry) (*Phytophthora ramorum*) (Great Britain) Order 2004, SI 2004/3213, art 11(8). Such other persons whether or not accompanied by the inspector, upon production if so required of their authority given in that behalf by an inspector, may remain on the land and from time to time re-enter with such equipment and vehicles as aforesaid, and carry out such work for the purposes aforesaid and in such manner as the inspector may direct: art 11(8).
- 14 Plant Health (Forestry) (*Phytophthora ramorum*) (Great Britain) Order 2004, SI 2004/3213, art 11(4).
- 15 Plant Health (Forestry) (*Phytophthora ramorum*) (Great Britain) Order 2004, SI 2004/3213, art 11(5).
- 16 Plant Health (Forestry) (*Phytophthora ramorum*) (Great Britain) Order 2004, SI 2004/3213, art 11(6).

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F. LICENCES

88. Licences to carry out prohibited activities.

Notwithstanding any of the general statutory provisions¹, any tree pest² or relevant material³ may be landed⁴, kept, stored, sold, planted, moved or otherwise disposed of in Great Britain⁵ and any other thing prohibited by those provisions may be done under the authority of a licence, whether general or specific, granted by the Forestry Commissioners⁶ in exercise of any permitted⁷ derogation⁸.

A fee is payable to the Commissioners in connection with an application or for an inspection related to a licence⁹.

1 Ie any of the provisions of the Plant Health (Forestry) Order 2005, SI 2005/251: see PARAS 63 et seq, 89 et seq.

2 As to the meaning of 'tree pest' see PARA 63 note 2.

3 As to the meaning of 'relevant material' see PARA 63 note 3.

4 As to the meaning of 'landed' see PARA 63 note 1.

5 As to the meaning of 'Great Britain' see PARA 2 note 2.

6 As to the Forestry Commissioners see PARA 34 et seq.

7 Ie any derogation permitted by EC Council Directive 2000/29 (OJ L169, 10.7.2000, p 1).

8 Plant Health (Forestry) Order 2005, SI 2005/2517, art 38.

9 See the Plant Health (Fees) (Forestry) Regulations 2006, SI 2006/2697, reg 3(1), (3), Sch 2. 'Licence' means a licence to carry out any activity to which the Plant Health (Forestry) Order 2005, SI 2005/2517, art 38 (see the text and notes 1-8) applies: Plant Health (Fees) (Forestry) Regulations 2006, SI 2006/2697, reg 2.

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89. Licences for trial or scientific purposes and for work on varietal selections.

On receipt of an application for a licence containing the specified information¹ and on being satisfied that the general conditions² are fulfilled, the Forestry Commissioners³ must by licence⁴ authorise the landing⁵, movement and keeping of any tree pest⁶ or relevant material⁷ for activities for trial or scientific purposes or for work on varietal selections where such landing, movement or keeping would otherwise be prohibited⁸.

Where it is established to their satisfaction that the licensee has not fulfilled any specified condition⁹ imposed on a licence, the Commissioners must revoke the licence¹⁰.

At the conclusion of any activities to which a licence granted under these provisions relates, the licensee must:

- 284 (1) destroy or sterilise¹¹ any tree pest or relevant material that was the subject of the activities and any other relevant material which has come into contact with or which may have been contaminated by any such tree pest or relevant material¹²; and
- 285 (2) sterilise, or clean in such other manner as may be specified by the Commissioners, the premises and facilities at which the activities were undertaken¹³.

The Commissioners may, however, authorise the licensee to refrain from destroying any relevant material under head (1) above if they are satisfied that it has been subjected to appropriate quarantine measures¹⁴ and that it has been found by testing in such manner as may be specified by the Commissioners to be free from the listed tree pests¹⁵ and from other tree pests considered by them to pose a risk¹⁶.

A licence for scientific or research purposes may also be granted in respect of the importation, movement and keeping of *Phytophthora ramorum*¹⁷, or any susceptible material¹⁸ on which *Phytophthora ramorum* is present, which would otherwise be prohibited¹⁹.

1 I.e the information set out in EC Commission Directive 95/44 (OJ L184, 3.8.95, p 34) establishing the conditions under which certain harmful organisms, plants, plant products and other objects may be introduced into or moved within the Community or certain protected zones thereof, for trial or scientific purposes and for work on varietal selections, art 1(2).

2 I.e the general conditions set out in EC Commission Directive 95/44 (OJ L184, 3.8.95, p 34) Annex I.

3 As to the Forestry Commissioners see PARA 34 et seq.

4 A licence so granted must be subject to: (1) the conditions laid down in EC Commission Directive 95/44 (OJ L184, 3.8.95, p 34) art 2(2) to the extent that they are relevant to any tree pest or relevant material that is the subject of the activities to which the licence relates; (2) such conditions specifying quarantine measures under Annex I para 2(a) as the Commissioners may determine; and (3) such conditions specifying further quarantine measures under Annex I para 2(b) as the Commissioners may determine: Plant Health (Forestry) Order 2005, SI 2005/2517, art 39(2), (7)(b). For the purpose of art 39(2), references to the 'responsible official body' in EC Commission Directive 95/44 (OJ L184, 3.8.95, p 34) art 2(2), Annex I are to be taken to refer to the Forestry Commissioners: Plant Health (Forestry) Order 2005, SI 2005/2517, art 39(6).

5 As to the meaning of 'landing' see PARA 63 note 1.

- 6 As to the meaning of 'tree pest' see PARA 63 note 2.
- 7 As to the meaning of 'relevant material' see PARA 63 note 3.
- 8 Plant Health (Forestry) Order 2005, SI 2005/2517, art 39(1). The prohibition referred to in the text is prohibition under the Plant Health (Forestry) Order 2005, SI 2005/2517: see PARAS 63 et seq, 90 et seq.
- 9 Ie any condition imposed under the Plant Health (Forestry) Order 2005, SI 2005/2517, art 39(2)(b) or (c): see note 4.
- 10 Plant Health (Forestry) Order 2005, SI 2005/2517, art 39(3).
- 11 Ie subject to the Plant Health (Forestry) Order 2005, SI 2005/2517, art 39(5): see the text and notes 14-16.
- 12 Plant Health (Forestry) Order 2005, SI 2005/2517, art 39(4)(a). Contravention of art 39(4) is an offence: see PARA 94.
- 13 Plant Health (Forestry) Order 2005, SI 2005/2517, art 39(4)(b). See note 12.
- 14 'Appropriate quarantine measures' means such quarantine measures as may be specified by the Commissioners: Plant Health (Forestry) Order 2005, SI 2005/2517, art 39(7)(a).
- 15 Ie the tree pests listed in the Plant Health (Forestry) Order 2005, SI 2005/2517.
- 16 Plant Health (Forestry) Order 2005, SI 2005/2517, art 39(5).
- 17 As to the meaning of *Phytophthora ramorum* see PARA 71 note 2.
- 18 As to the meaning of 'susceptible material' see PARA 71 note 19.
- 19 See the Plant Health (Forestry) (*Phytophthora ramorum*) (Great Britain) Order 2004, SI 2004/3213, art 9. Failure to comply with the prohibitions contained in art 9 is an offence: see PARA 95.

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G. NOTIFICATIONS, PROVISION AND EXCHANGE OF INFORMATION

90. Notification of the presence or suspected presence of certain tree pests.

The occupier or other person in charge of premises¹ who knows or suspects that any tree pest²:

- 286 (1) of a specified description³; or
- 287 (2) which, although not of such a specified description, is not normally present in Great Britain⁴ and which is likely to be injurious to trees⁵ in Great Britain⁶,

is present on the premises, or any other person who, in the course of his duties or business, becomes aware or suspicious of the presence of such tree pest on any premises, must immediately give notice to the Forestry Commissioners⁷ or an inspector⁸ of the presence or suspected presence of such tree pest⁹. Where a person gives such notice orally, he must confirm it in writing as soon as reasonably practicable¹⁰.

1 As to the meaning of 'premises' see PARA 65 note 13.

2 As to the meaning of 'tree pest' see PARA 63 note 2.

3 Plant Health (Forestry) Order 2005, SI 2005/2517, art 40(1), (2)(a). For this purpose a 'specified description' is a description specified in the Plant Health (Forestry) Order 2005, SI 2005/2517, Sch 1 (see PARA 63 note 4) or Sch 2 col 3 (see PARA 63 note 8): art 40(2)(a).

4 As to the meaning of 'Great Britain' see PARA 2 note 2.

5 As to the meaning of 'tree' see PARA 63 note 2.

6 Plant Health (Forestry) Order 2005, SI 2005/2517, art 40(2)(b).

7 As to the Forestry Commissioners see PARA 34 et seq.

8 As to the meaning of 'inspector' see PARA 67 note 9.

9 Plant Health (Forestry) Order 2005, SI 2005/2517, art 40(1) (amended by SI 2006/2696). Contravention of the Plant Health (Forestry) Order 2005, SI 2005/2517, art 40(1) is an offence: see PARA 94.

10 Plant Health (Forestry) Order 2005, SI 2005/2517, art 40(1A) (added by SI 2006/2696).

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91. Notification of the likely entry into, or presence in, a free zone of tree pests or relevant material.

The responsible authority for a free zone¹ who knows or suspects that any of the following things, that is:

- 288 (1) any tree pest² of a specified description³;
- 289 (2) any tree pest which, although not of such a specified description, is not normally present in Great Britain⁴ and which is likely to be injurious to trees⁵ in Great Britain⁶;
- 290 (3) any relevant material⁷ of a specified description⁸ which originates in a country specified⁹ in relation to that relevant material¹⁰,

which has been, or is likely to be, landed¹¹ in Great Britain, and has not been cleared out of charge under the Customs and Excise Management Act 1979¹², is likely to enter, or is present in, such a free zone, must immediately give notice of that fact to the Forestry Commissioners¹³ or an inspector¹⁴. Where a person gives such notice orally, he must confirm it in writing as soon as reasonably practicable¹⁵.

1 As to the appointment of a 'responsible authority', and the designation of 'free zones', for these purposes see, by virtue of the Plant Health (Forestry) Order 2005, SI 2005/2517, arts 2(1), 41(3), the Customs and Excise Management Act 1979 s 100A; and **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 1043.

2 As to the meaning of 'tree pest' see PARA 63 note 2.

3 Plant Health (Forestry) Order 2005, SI 2005/2517, art 41(1), (2)(a) (art 41 amended by SI 2006/2696). For this purpose a 'specified description' is a description specified in the Plant Health (Forestry) Order 2005, SI 2005/2517, Sch 1 (see PARA 63 note 4) or Sch 2 col 3 (see PARA 63 note 8): art 41(2)(a).

4 As to the meaning of 'Great Britain' see PARA 2 note 2.

5 As to the meaning of 'tree' see PARA 63 note 2.

6 Plant Health (Forestry) Order 2005, SI 2005/2517, art 41(2)(b).

7 As to the meaning of 'relevant material' see PARA 63 note 3.

8 le of a description specified in the Plant Health (Forestry) Order 2005, SI 2005/2517, Sch 3 col 2: see PARA 63 note 8.

9 le specified in the Plant Health (Forestry) Order 2005, SI 2005/2517, Sch 3 col 3 opposite the reference to that relevant material: see PARA 63 note 8.

10 Plant Health (Forestry) Order 2005, SI 2005/2517, art 41(2)(c).

11 As to the meaning of 'landed' see PARA 63 note 1.

12 As to such clearance see **CUSTOMS AND EXCISE**.

13 As to the Forestry Commissioners see PARA 34 et seq.

14 Plant Health (Forestry) Order 2005, SI 2005/2517, art 41(1), (2) (art 41(1) as amended: see note 3). Contravention of the Plant Health (Forestry) Order 2005, SI 2005/2517, art 41(1) is an offence: see PARA 94. As to the meaning of 'inspector' see PARA 67 note 9.

15 Plant Health (Forestry) Order 2005, SI 2005/2517, art 41(1A) (added by SI 2006/2696).

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92. Information to be given to an inspector or other officer of the Forestry Commissioners.

An inspector¹ or any other officer of the Forestry Commissioners² may by notice in writing require any person referred to in heads (1) to (3) below to give the inspector or officer within such reasonable time as may be specified in that notice any information referred to in heads (i) to (iii) below³. A person to whom the above provision refers is any person who:

- 291 (1) is the owner or occupier or other person in charge of premises⁴ in respect of which a notice⁵ has been served⁶;
- 292 (2) has or has had or is reasonably suspected by an inspector or other officer of the Commissioners to have or have had in his possession or under his charge:
- 25
- 40. (a) any tree pest⁷ which is of a specified description⁸;
- 41. (b) any tree pest which, although not of such a specified description, is not normally present in Great Britain⁹ and which is likely to be injurious to trees¹⁰ in Great Britain¹¹;
- 42. (c) any relevant material¹² carrying or infected with a tree pest mentioned in head (a) or head (b) above¹³; or
- 43. (d) any relevant material which an inspector or any other officer of the Commissioners knows to have been landed¹⁴ or suspects has been landed in, or exported from, Great Britain¹⁵; or
- 26
- 293 (3) as auctioneer, salesman or otherwise, has sold, offered for sale or otherwise disposed of any tree pest or relevant material mentioned in head (2) above¹⁶.

The information which may be required to be given¹⁷ is any information that a person referred to in heads (1) to (3) above may possess:

- 294 (i) as to trees grown or products stored at any time on the premises referred to in head (1) above¹⁸;
- 295 (ii) as to any tree pest or relevant material referred to in head (2) above¹⁹; and
- 296 (iii) as to the persons who have had or are likely to have had any tree pest or relevant material referred to in head (2) above in their possession or under their charge²⁰.

A person who is required to give an inspector or other officer any information under these provisions must produce for examination by that inspector or other officer any licences²¹, official statements²², certificates, plant passports²³, records, invoices or other documents relating to any tree pest or relevant material to which that information relates²⁴.

1 As to the meaning of 'inspector' see PARA 67 note 9.

2 As to the Forestry Commissioners see PARA 34 et seq.

3 Plant Health (Forestry) Order 2005, SI 2005/2517, art 42(1).

- 4 As to the meaning of 'premises' see PARA 65 note 13.
- 5 Is a notice under the Plant Health (Forestry) Order 2005, SI 2005/2517: see PARAS 63 et seq, 94. As to the service of notices see PARA 85.
- 6 Plant Health (Forestry) Order 2005, SI 2005/2517, art 42(2)(a).
- 7 As to the meaning of 'tree pest' see PARA 63 note 2.
- 8 Plant Health (Forestry) Order 2005, SI 2005/2517, art 42(2)(b)(i). A 'specified description' for these purposes is a description specified in Sch 1 (see PARA 63 note 4) or Sch 2 col 3 (see PARA 63 note 8): art 42(2)(b)(i).
- 9 As to the meaning of 'Great Britain' see PARA 2 note 2.
- 10 As to the meaning of 'tree' see PARA 63 note 2.
- 11 Plant Health (Forestry) Order 2005, SI 2005/2517, art 42(2)(b)(ii).
- 12 As to the meaning of 'relevant material' see PARA 63 note 3.
- 13 Plant Health (Forestry) Order 2005, SI 2005/2517, art 42(2)(b)(iii).
- 14 As to the meaning of 'landed' see PARA 63 note 1.
- 15 Plant Health (Forestry) Order 2005, SI 2005/2517, art 42(2)(b)(iv).
- 16 Plant Health (Forestry) Order 2005, SI 2005/2517, art 42(2)(c).
- 17 Is the information referred to in the Plant Health (Forestry) Order 2005, SI 2005/2517, art 42(1): see the text and notes 1-3.
- 18 Plant Health (Forestry) Order 2005, SI 2005/2517, art 42(3)(a).
- 19 Plant Health (Forestry) Order 2005, SI 2005/2517, art 42(3)(b).
- 20 Plant Health (Forestry) Order 2005, SI 2005/2517, art 42(3)(c).
- 21 As to licences see PARAS 88-89.
- 22 As to the meaning of 'official statement' see PARA 72 note 5.
- 23 As to the meaning of 'plant passport' see PARA 65 note 13.
- 24 Plant Health (Forestry) Order 2005, SI 2005/2517, art 42(4).

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H. EXPORT AND RE-EXPORT TO THIRD COUNTRIES

93. Export and re-export of relevant material.

A person who intends exporting or re-exporting relevant material¹ to a third country² may apply to the Forestry Commissioners³, in such form and manner as they may specify, for a certificate⁴. Where the Commissioners have received an application, made in accordance with this provision, an authorised officer⁵ must:

- 297 (1) carry out any of the specified services⁶ which he considers necessary to allow him to issue the certificate⁷; and
- 298 (2) if he is satisfied that a certificate should be issued, issue the certificate on behalf of the Commissioners⁸.

An applicant for a certificate must pay to the Commissioners, in respect of the services referred to in head (1) above, the prescribed⁹ fee¹⁰.

It is an offence to make a false statement, or to withhold material information, in order to procure the issuing of such a certificate¹¹.

1 For these purposes 'relevant material' means: (1) any tree, wood or isolated bark (as those terms are defined in the Plant Health (Forestry) Order 2005, SI 2005/2517: see PARA 63 notes 2, 3) or soil or growing medium; (2) non-manufactured wood which is in the form of packing cases, boxes, crates, drums and similar packings, pallets, box pallets and other load boards and pallet collars, whether or not in use in the transport of objects; and (3) used forestry machinery: Plant Health (Export Certification) (Forestry) (Great Britain) Order 2004, SI 2004/1684, art 2; Plant Health (Forestry) Order 2005, SI 2005/2517, art 2(1).

2 As to the meaning of 'third country' see PARA 63 note 12 (definition applied by the Plant Health (Export Certification) (Forestry) (Great Britain) Order 2004, SI 2004/1684, art 2).

3 As to the Forestry Commissioners see PARA 34 et seq.

4 Plant Health (Export Certification) (Forestry) (Great Britain) Order 2004, SI 2004/1684, art 3(1). 'Certificate', in relation to an application made pursuant to the 2004 Order, means either a phytosanitary certificate or a reforwarding phytosanitary certificate, as the case may be; 'phytosanitary certificate' means a certificate duly completed in the form set out in Sch 1 or in such other similar form as may be agreed between the Commissioners and the third country whose phytosanitary requirements the certificate is intended to meet; and 'reforwarding phytosanitary certificate' means a certificate duly completed in the form set out in Sch 2 or in such other similar form as may be agreed between the Commissioners and the third country whose phytosanitary requirements the certificate is intended to meet: art 2.

5 For these purposes 'authorised officer' means an officer of the Commissioners or any person, whether or not an officer of the Commissioners, authorised by them to be an inspector for the purposes of the Plant Health (Forestry) Order 2005, SI 2005/2517 (see PARA 63 et seq): Plant Health (Export Certification) (Forestry) (Great Britain) Order 2004, SI 2004/1684, art 2.

6 I.e. the services listed in the Plant Health (Export Certification) (Forestry) (Great Britain) Order 2004, SI 2004/1684, Sch 3 col 1. Those services are: (1) consideration of an application, including the issue, where appropriate, of a certificate; (2) examination or testing of relevant material and associated activities (including travelling and office time): Sch 3 col 1.

7 Plant Health (Export Certification) (Forestry) (Great Britain) Order 2004, SI 2004/1684, art 3(2)(a).

8 Plant Health (Export Certification) (Forestry) (Great Britain) Order 2004, SI 2004/1684, art 3(2)(b).

9 le the fee set out in the Plant Health (Export Certification) (Forestry) (Great Britain) Order 2004, SI 2004/1684, Sch 3 col 2. At the date at which this volume states the law the prescribed fees were: (1) for the services set out in note 6 head (1), £15; (2) for the services set out in note 6 head (2), £7.50 for each quarter hour or part thereof with a minimum fee of £27.00: Sch 3 col 2.

10 Plant Health (Export Certification) (Forestry) (Great Britain) Order 2004, SI 2004/1684, art 4.

11 See the Plant Health (Export Certification) (Forestry) (Great Britain) Order 2004, SI 2004/1684, art 5; and PARA 94.

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I. OFFENCES

94. Offences and penalties generally.

A person is guilty of an offence¹ if without reasonable excuse, proof of which lies with him:

- 299 (1) subject to certain exceptions², he contravenes or fails to comply with the specified statutory provisions³;
- 300 (2) he contravenes or fails to comply with a provision or condition of a notice served⁴, or licence⁵ granted or of any direction given, under the statutory provisions⁶; or
- 301 (3) he intentionally obstructs an inspector⁷ or any person authorised by an inspector in exercise of his powers⁸.

A person is also guilty of an offence if:

- 302 (a) for the purpose of procuring the issue of a plant passport⁹ or a replacement plant passport, a phytosanitary certificate¹⁰, a phytosanitary certificate for re-export¹¹ or a licence¹², he knowingly or recklessly makes a statement which is false in a material particular or intentionally fails to disclose any material information¹³;
- 303 (b) he dishonestly issues a plant passport, or dishonestly alters a plant passport, or reuses a plant passport¹⁴.

A person is also guilty of an offence¹⁵ if, for the purposes of procuring the issue of a certificate for the export or re-export of relevant material to a third country¹⁶, he:

- 304 (i) makes a statement which he knows to be false in a material particular¹⁷;
- 305 (ii) recklessly makes a statement which is false in a material particular¹⁸; or
- 306 (iii) intentionally fails to disclose any material information¹⁹.

1 A person guilty of an offence under the Plant Health (Forestry) Order 2005, SI 2005/2517, is liable on summary conviction to a fine not exceeding level 5 on the standard scale: art 44. As to the standard scale see PARA 32 note 6. Where a body corporate is guilty of such an offence, and that offence is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of any director, manager or secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he, as well as the body corporate, is guilty of the offence and is liable to be proceeded against and punished accordingly: art 43(5). For these purposes, 'director' in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate: art 43(6). Where the commission by any person of an offence under that Order is due to the act or default of some other person, that other person may be charged with and convicted of the offence whether or not proceedings for the offence are taken against the first-mentioned person: art 43(8).

2 Ie subject to the Plant Health (Forestry) Order 2005, SI 2005/2517, art 43(2): see note 3.

3 Plant Health (Forestry) Order 2005, SI 2005/2517, art 43(1)(a). The specified provisions are: (1) art 6(1) (see PARA 64); (2) art 9 (see PARA 67); (3) art 10(1) or (4) (see PARA 68); (4) art 16(2) or (3) (see PARA 70); (5) art 19(1) (see PARA 73); (6) art 20 (see PARA 74); (7) art 23(3) or (4) (see PARA 75); (8) art 25(1) (see PARA 78); (9) art 26(2) or (3) (see PARA 78); (10) art 27(1) (see PARA 79); (11) art 35 (see PARA 85); (12) art 39(4) (see PARA 89); (13) art 40(1) (see PARA 90); and (14) art 41(1) (see PARA 91): art 43(1)(a). Article 43(1)(a) does not apply where an article of any description is landed in Great Britain in contravention of a prohibition in the Plant Health

(Forestry) Order 2005, SI 2005/2517 (see PARA 63 et seq), other than the prohibition in art 6(1): art 43(2). As to the meaning of 'landed' see PARA 63 note 1; and as to the meaning of 'Great Britain' see PARA 2 note 2.

4 As to the service of notices see PARA 85.

5 As to licences see PARAS 88-89.

6 Plant Health (Forestry) Order 2005, SI 2005/2517, art 43(1)(b). The 'statutory provisions' are the Plant Health (Forestry) Order 2005, SI 2005/2517: see PARA 63 et seq.

7 As to the meaning of 'inspector' see PARA 67 note 9.

8 Plant Health (Forestry) Order 2005, SI 2005/2517, art 43(1)(c). The 'powers' referred to in the text are powers under the Plant Health (Forestry) Order 2005, SI 2005/2517: see PARA 63 et seq.

9 As to the meaning of 'plant passport' see PARA 65 note 13.

10 As to the meaning of 'phytosanitary certificate' see PARA 63 note 13.

11 As to the meaning of 'phytosanitary certificate for re-export' see PARA 63 note 13.

12 I.e. a licence under the Plant Health (Forestry) Order 2005, SI 2005/2517: see PARAS 88-89.

13 Plant Health (Forestry) Order 2005, SI 2005/2517, art 43(3).

14 Plant Health (Forestry) Order 2005, SI 2005/2517, art 43(4).

15 A person guilty of an offence under the Plant Health (Export Certification) (Forestry) (Great Britain) Order 2004, SI 2004/1684, is liable on summary conviction to a fine not exceeding level 5 on the standard scale: art 5(2).

16 I.e. a certificate under the Plant Health (Export Certification) (Forestry) (Great Britain) Order 2004, SI 2004/1684: see PARA 93.

17 Plant Health (Export Certification) (Forestry) (Great Britain) Order 2004, SI 2004/1684, art 5(1)(a).

18 Plant Health (Export Certification) (Forestry) (Great Britain) Order 2004, SI 2004/1684, art 5(1)(b).

19 Plant Health (Export Certification) (Forestry) (Great Britain) Order 2004, SI 2004/1684, art 5(1)(c).

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95. Offences relating to *Phytophthora ramorum*.

A person is guilty of an offence¹ if, without reasonable excuse, proof of which lies on him:

- 307 (1) he contravenes or fails to comply with:
- 27
44. (a) the prohibition² against the introduction and spread of *Phytophthora ramorum*³;
45. (b) the controls⁴ on the importation of susceptible material originating in the USA⁵;
46. (c) the controls⁶ on the movement of susceptible trees⁷; or
47. (d) the provisions⁸ relating to the granting of licences for scientific or research purposes⁹;
- 28
- 308 (2) he contravenes or fails to comply with a provision or condition of a notice served under the relevant statutory provisions¹⁰ or a licence granted for the purposes thereof¹¹; or
- 309 (3) he intentionally obstructs an inspector¹² or any person authorised by an inspector in the exercise of his powers given by or under those provisions¹³.

A person is also guilty of an offence¹⁴:

- 310 (a) if, for the purpose of procuring the authority to issue a plant passport¹⁵ he:
- 29
48. (i) makes a statement which he knows to be false in a material particular¹⁶;
49. (ii) recklessly makes a statement which is false in a material particular¹⁷; or
50. (iii) intentionally fails to disclose any material information¹⁸;
- 30
- 311 (b) if he dishonestly issues¹⁹ a false plant passport²⁰; or
- 312 (c) if he dishonestly alters a plant passport affixed to susceptible material²¹ or reuses a plant passport for susceptible material which is not the material for which the plant passport was issued²².

1 A person guilty of an offence under the Plant Health (Forestry) (*Phytophthora ramorum*) (Great Britain) Order 2004, SI 2004/3213, is liable on summary conviction to a fine not exceeding level 5 on the standard scale: art 13(5). As to the standard scale see PARA 32 note 6.

2 See the Plant Health (Forestry) (*Phytophthora ramorum*) (Great Britain) Order 2004, SI 2004/3213, art 3; and PARA 71.

3 Plant Health (Forestry) (*Phytophthora ramorum*) (Great Britain) Order 2004, SI 2004/3213, art 13(1)(a) (art 13(1)(a) substituted, art 13(1A) added, by SI 2007/3450). As to the meaning of '*Phytophthora ramorum*' see PARA 71 note 2. This provision does not apply where an article of any description is landed in Great Britain in contravention of a prohibition in the Plant Health (Forestry) (*Phytophthora ramorum*) (Great Britain) Order 2004, SI 2004/3213: art 13(1A) (as so added). As to the meaning of 'Great Britain' see PARA 2 note 2.

4 See the Plant Health (Forestry) (*Phytophthora ramorum*) (Great Britain) Order 2004, SI 2004/3213, art 4; and PARA 71.

- 5 Plant Health (Forestry) (*Phytophthora ramorum*) (Great Britain) Order 2004, SI 2004/3213, art 13(1)(a) (as substituted: see note 3).
- 6 See the Plant Health (Forestry) (*Phytophthora ramorum*) (Great Britain) Order 2004, SI 2004/3213, art 5(1); and PARA 76.
- 7 Plant Health (Forestry) (*Phytophthora ramorum*) (Great Britain) Order 2004, SI 2004/3213, art 13(1)(a) (as substituted: see note 3).
- 8 See the Plant Health (Forestry) (*Phytophthora ramorum*) (Great Britain) Order 2004, SI 2004/3213, art 9(1); and PARA 89.
- 9 Plant Health (Forestry) (*Phytophthora ramorum*) (Great Britain) Order 2004, SI 2004/3213, art 13(1)(a) (as substituted: see note 3).
- 10 le under the Plant Health (Forestry) (*Phytophthora ramorum*) (Great Britain) Order 2004, SI 2004/3213. As to notices under that Order see art 12; and PARA 86.
- 11 Plant Health (Forestry) (*Phytophthora ramorum*) (Great Britain) Order 2004, SI 2004/3213, art 13(1)(b). As to licences granted for these purposes see art 9; and PARA 89.
- 12 As to the meaning of 'inspector' for these purposes see PARA 71 note 15.
- 13 Plant Health (Forestry) (*Phytophthora ramorum*) (Great Britain) Order 2004, SI 2004/3213, art 13(1)(c).
- 14 See note 1.
- 15 le under the Plant Health (Forestry) (*Phytophthora ramorum*) (Great Britain) Order 2004, SI 2004/3213. As to plant passports see art 6; and PARA 80.
- 16 Plant Health (Forestry) (*Phytophthora ramorum*) (Great Britain) Order 2004, SI 2004/3213, art 13(2)(a).
- 17 Plant Health (Forestry) (*Phytophthora ramorum*) (Great Britain) Order 2004, SI 2004/3213, art 13(2)(b).
- 18 Plant Health (Forestry) (*Phytophthora ramorum*) (Great Britain) Order 2004, SI 2004/3213, art 13(2)(c).
- 19 See note 15.
- 20 Plant Health (Forestry) (*Phytophthora ramorum*) (Great Britain) Order 2004, SI 2004/3213, art 13(3).
- 21 As to the meaning of 'susceptible material' see PARA 71 note 19.
- 22 Plant Health (Forestry) (*Phytophthora ramorum*) (Great Britain) Order 2004, SI 2004/3213, art 13(4).

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(ii) Wood Packaging Material

96. Restrictions on marking wood packaging material.

No person may apply an ISPM No 15 mark¹ to any wood packaging material² except as authorised by a certificate³; and no person may apply any mark other than an ISPM No 15 mark to wood packaging material for the purpose of indicating that it has been subject to an approved measure⁴.

Unless so authorised by the Forestry Commissioners⁵ in writing, no person may manufacture⁶ any wood packaging material from wood to which has been applied an ISPM No 15 mark, or any other mark designed to indicate that it has been subject to an approved measure, without first removing that mark⁷.

1 'ISPM No 15 mark' means a mark which contains the information specified in ISPM No 15 Annex II and such other information as may be required by the certificate; and 'ISPM No 15' means International Standard for Phytosanitary Measures No 15 of March 2002 on Guidelines for regulating wood packaging material in international trade, prepared by the Secretariat of the International Plant Protection Convention (IPPC) established by the Food and Agriculture Organisation of the United Nations: Plant Health (Wood Packaging Material Marking) (Forestry) Order 2006, SI 2006/2695, art 2. 'Certificate' means a certificate granted in accordance with the provisions of that Order which authorises the holder to apply an ISPM No 15 mark to wood packaging material: Plant Health (Wood Packaging Material Marking) (Forestry) Order 2006, SI 2006/2695, art 2.

2 'Wood packaging material' means non-manufactured wood, excluding wood of 6 mm or less, which is: (1) in the form of packing cases, boxes, crates, drums and similar packings, pallets, box pallets and other load boards, pallet collars or dunnage; or (2) a component intended to be used in the manufacture of such items; and 'wood' means any wood which retains part or all of its natural round surface, with or without bark: Plant Health (Wood Packaging Material Marking) (Forestry) Order 2006, SI 2006/2695, art 2. 'Non-manufactured wood' means wood which has not undergone a manufacturing process involving glue, heat or pressure or a combination of these; and 'dunnage' means wood used or intended to be used to wedge or support any cargo: art 2.

3 Plant Health (Wood Packaging Material Marking) (Forestry) Order 2006, SI 2006/2695, art 3(1).

4 Plant Health (Wood Packaging Material Marking) (Forestry) Order 2006, SI 2006/2695, art 3(2). 'Approved measure' means any of the approved measures specified in ISPM No 15 Annex I or any other treatment or measure recognised by the Forestry Commissioners to have equivalent effect: art 2.

5 As to the Forestry Commissioners see PARA 34 et seq.

6 'Manufacture', in relation to wood packaging material, includes: (1) the recycling, remanufacture and repair of such material; (2) the application of an approved measure to such material; and (3) for the purposes of the Plant Health (Wood Packaging Material Marking) (Forestry) Order 2006, SI 2006/2695, art 9 (see PARA 98), the application of an ISPM No 15 mark to such material; 'recycling', in relation to wood packaging material, means subjecting wood packaging material to a process in which it is dismantled, either partially or completely, and its components used without further reworking in the manufacture of a new item of wood packaging material; 'remanufacture', in relation to wood packaging material, means subjecting wood packaging material to a process in which it is dismantled, either partially or completely, and its components used either: (a) in their original form together with previously unused wood; or (b) after re-sawing whether or not together with previously unused wood, in the manufacture of a new item of wood packaging material; and 'repair', in relation to wood packaging material, means subjecting wood packaging material to a process in which it has one or more components removed and replaced with previously unused wood: art 2.

7 Plant Health (Wood Packaging Material Marking) (Forestry) Order 2006, SI 2006/2695, art 3(3).

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97. Certificates.

Any wood packaging material manufacturer¹ who wishes to apply an ISPM No 15 mark² to any wood packaging material manufactured by him must apply to the Forestry Commissioners³ for a certificate⁴ in accordance with the following provisions⁵. An application for a certificate must:

- 313 (1) specify any approved measure or measures⁶ which the manufacturer wishes to carry out and in respect of which authority to apply an ISPM No 15 mark is sought⁷; and
- 314 (2) provide the Commissioners with such information as they may specify to enable them to be satisfied that the manufacturer should be permitted to apply an ISPM No 15 mark to wood packaging material manufactured by him⁸.

Where the Commissioners have received an application for a certificate, they must assess whether the applicant is able to carry out in a proper manner any approved measure or measures to which the application relates and whether he should be permitted to apply an ISPM No 15 mark to wood packaging material manufactured by him⁹ and must either issue a certificate or notify the applicant that his application is refused¹⁰.

The holder of a certificate may apply for it to be renewed no earlier than one month before its expiry in such form and manner as the Commissioners may specify¹¹. On receipt of an application for renewal of a certificate, the Commissioners must assess whether the applicant is able to carry out in a proper manner any approved measure or measures to which the application relates and whether he should be permitted to apply an ISPM No 15 mark to wood packaging material manufactured by him¹² and must either renew the certificate or notify the applicant that his application is refused¹³.

If, following the refusal of an application for a certificate or for the renewal of a certificate or the withdrawal of a certificate¹⁴, the Commissioners are satisfied that the condition for inviting an application for reassessment¹⁵ is met, they may invite a wood packaging material manufacturer to apply for reassessment in accordance with the following provisions¹⁶. The Commissioners may invite an application for reassessment if they are able to identify one or more actions which, if taken, would enable them to issue a certificate¹⁷. An invitation to make such an application must:

- 315 (a) specify the actions which need to be taken before the Commissioners can be satisfied that they should issue a certificate¹⁸;
- 316 (b) invite the wood packaging material manufacturer to apply for reassessment within three months of the date on which the invitation was received by him¹⁹; and
- 317 (c) specify the form and manner in which the application is to be made²⁰.

Where the Commissioners have received an application, made in accordance with their invitation, they must reassess whether the applicant is able to carry out in a proper manner any approved measure or measures to which the application relates and whether he should be permitted to apply an ISPM No 15 mark to wood packaging material manufactured by him²¹ and must either issue a certificate or notify the applicant that his application is refused²².

A certificate must:

- 318 (i) be in the prescribed form²³;
- 319 (ii) specify any approved measure or measures that it authorises the manufacturer to carry out and in respect of which an ISPM No 15 mark may be applied²⁴;
- 320 (iii) specify any information which the Commissioners require to be included in the ISPM No 15 mark²⁵; and
- 321 (iv) specify the period for which it remains valid²⁶,

and the period for which a certificate remains valid is to be three months, in the case of a certificate issued following the withdrawal of a certificate, and six months, in all other cases²⁷.

1 'Wood packaging material manufacturer' means any person who manufactures wood packaging material in the course of a trade or business: Plant Health (Wood Packaging Material Marking) (Forestry) Order 2006, SI 2006/2695, art 2. As to the meaning of 'wood packaging material' see PARA 96 note 2; and as to the meaning of 'manufacture' see PARA 96 note 6.

2 As to the meaning of 'ISPM No 15 mark' see PARA 96 note 1.

3 As to the Forestry Commissioners see PARA 34 et seq.

4 As to the meaning of 'certificate' see PARA 96 note 1.

5 Plant Health (Wood Packaging Material Marking) (Forestry) Order 2006, SI 2006/2695, art 4(1). An application for a certificate must be accompanied by the prescribed fee which must be paid in such manner as the Commissioners may specify: art 7. At the date at which this title states the law, the prescribed fee was £400: see art 7, Sch 1.

6 As to the meaning of 'approved measure' see PARA 96 note 4.

7 Plant Health (Wood Packaging Material Marking) (Forestry) Order 2006, SI 2006/2695, art 4(2)(a).

8 Plant Health (Wood Packaging Material Marking) (Forestry) Order 2006, SI 2006/2695, art 4(2)(b).

9 Plant Health (Wood Packaging Material Marking) (Forestry) Order 2006, SI 2006/2695, art 4(3)(a).

10 Plant Health (Wood Packaging Material Marking) (Forestry) Order 2006, SI 2006/2695, art 4(3)(b).

11 Plant Health (Wood Packaging Material Marking) (Forestry) Order 2006, SI 2006/2695, art 5(1). An application for a renewal of a certificate must be accompanied by the prescribed fee which must be paid in such manner as the Commissioners may specify: art 7. At the date at which this volume states the law the prescribed fee was £120: see Sch 1.

12 Plant Health (Wood Packaging Material Marking) (Forestry) Order 2006, SI 2006/2695, art 5(2)(a).

13 Plant Health (Wood Packaging Material Marking) (Forestry) Order 2006, SI 2006/2695, art 5(2)(b).

14 As to the withdrawal of a certificate see PARA 98.

15 See the condition in the Plant Health (Wood Packaging Material Marking) (Forestry) Order 2006, SI 2006/2695, art 6(2): see the text and note 17.

16 Plant Health (Wood Packaging Material Marking) (Forestry) Order 2006, SI 2006/2695, art 6(1). An application for reassessment must be accompanied by the prescribed fee which must be paid in such manner as the Commissioners may specify: art 7. At the date at which this volume states the law the prescribed fee was £120: see Sch 1.

17 Plant Health (Wood Packaging Material Marking) (Forestry) Order 2006, SI 2006/2695, art 6(2).

18 Plant Health (Wood Packaging Material Marking) (Forestry) Order 2006, SI 2006/2695, art 6(3)(a).

19 Plant Health (Wood Packaging Material Marking) (Forestry) Order 2006, SI 2006/2695, art 6(3)(b).

20 Plant Health (Wood Packaging Material Marking) (Forestry) Order 2006, SI 2006/2695, art 6(3)(c).

- 21 Plant Health (Wood Packaging Material Marking) (Forestry) Order 2006, SI 2006/2695, art 6(4)(a).
- 22 Plant Health (Wood Packaging Material Marking) (Forestry) Order 2006, SI 2006/2695, art 6(4)(b).
- 23 Plant Health (Wood Packaging Material Marking) (Forestry) Order 2006, SI 2006/2695, art 8(1)(a). For the prescribed form of certificate see Sch 2.
- 24 Plant Health (Wood Packaging Material Marking) (Forestry) Order 2006, SI 2006/2695, art 8(1)(b).
- 25 Plant Health (Wood Packaging Material Marking) (Forestry) Order 2006, SI 2006/2695, art 8(1)(c).
- 26 Plant Health (Wood Packaging Material Marking) (Forestry) Order 2006, SI 2006/2695, art 8(1)(d).
- 27 Plant Health (Wood Packaging Material Marking) (Forestry) Order 2006, SI 2006/2695, art 8(2).

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98. Enforcement.

For the purpose of ascertaining whether any requirement compliance with which an ISPM No 15 mark¹ provides evidence has been met, or for any statutory purpose² including checking compliance with it, an inspector³ may, on production if so required of his authority, and at all reasonable hours, enter any premises⁴, other than premises used wholly or mainly as a dwelling, which he reasonably believes are used for the manufacture⁵, collection, storage, trade, transportation or importation of wood packaging material⁶. An inspector entering premises by virtue of these provision may:

- 322 (1) observe and monitor the manufacture of wood packaging material⁷;
- 323 (2) examine or test any treatment facility, machinery, tools or other equipment used for the manufacture of wood packaging material⁸;
- 324 (3) examine or take samples of wood packaging material, or its components⁹;
- 325 (4) inspect or make copies of any documents or records, in whatever form they may be held, relating to the manufacture of or trade in wood packaging material¹⁰;
- or
- 326 (5) take such photographs of the premises or of any material or of other objects found there or of any activity carried on there in connection with the manufacture of wood packaging material¹¹;

and for the purpose of the exercise of any of his powers under heads (1) to (5) above, an inspector may require the occupier or other person in charge of the premises to provide adequate lighting or, where appropriate, suitable areas for inspection¹².

Where an inspector knows, or has reasonable grounds for suspecting, that a mark has been applied to wood packaging material other than in accordance with the statutory provisions¹³, he may¹⁴ remove, or require another person to remove, such mark¹⁵.

Where an inspector knows, or has reasonable grounds for suspecting, that a person has applied or intends to apply a mark to wood packaging material other than in accordance with the statutory provisions¹⁶, he may seize from that person or from any premises at which the inspector believes such a mark has been or may be applied, any stencil, template or other item of equipment (the 'seized items') that appears to him capable of being used for applying an ISPM No 15 mark, or any other mark which may be intended to indicate that wood packaging material has been subject to an approved measure¹⁷. An inspector must give to the person appearing to him to be in charge of the seized items a notice (a 'seizure notice') giving the grounds for seizing such items and informing him of his rights¹⁸ to make a claim, and the address for the service of the claim¹⁹. If an inspector is not able to remove the seized items immediately, he may mark the items in any way that he sees fit and serve a notice on the person in charge of the items identifying them and prohibiting their movement or use until they are collected²⁰.

Any person claiming that any seized item was not liable to seizure must, within one month of the seizure, notify his claim to the Forestry Commissioners at the address specified in the seizure notice, setting out the grounds in full²¹. If a notification of a claim is not received within one month, the Commissioners must destroy the seized items²². If, however, a notification of a claim is received within one month, the Commissioners must either return the seized items or take proceedings for an order for their destruction by way of a complaint in a magistrates'

court and, if the court finds that any seized items were used to apply a mark to wood packaging material other than in accordance with the statutory provisions²³, or were intended to be so used, it must order their destruction²⁴.

The Commissioners may recover all reasonable costs incurred by them to secure destruction of the seized items from the person on whom the seizure notice was served²⁵ and they must publicise seizure notices in such manner as they see fit²⁶.

If, in the opinion of the Commissioners, a wood packaging material manufacturer²⁷ to whom a certificate²⁸ has been issued:

- 327 (a) has not properly carried out an approved measure to which the certificate relates²⁹;
- 328 (b) has otherwise manufactured wood packaging material in a manner in which the Commissioners consider it inappropriate to continue to permit the manufacturer to apply an ISPM No 15 mark to wood packaging material manufactured by him³⁰; or
- 329 (c) has not complied with any statutory provision³¹,

they may orally or by notice in writing withdraw the certificate with immediate effect³². Where the Commissioners withdraw a certificate orally, they must confirm such withdrawal in writing as soon as is reasonably practicable³³.

1 As to the meaning of 'ISPM No 15 mark' see PARA 96 note 1.

2 Ie any other purposes of the Plant Health (Wood Packaging Material Marking) (Forestry) Order 2006, SI 2006/2695: see PARAS 96-97, 99.

3 For these purposes 'inspector' means any person authorised by the Forestry Commissioners to be an inspector for the purposes of the Plant Health (Forestry) Order 2005, SI 2005/2517 (see PARA 71 note 15): Plant Health (Wood Packaging Material Marking) (Forestry) Order 2006, SI 2006/2695, art 2. As to the Forestry Commissioners see PARA 34 et seq.

4 'Premises' includes any land, building, vehicle, vessel, aircraft, hovercraft, freight container or railway wagon: Plant Health (Wood Packaging Material Marking) (Forestry) Order 2006, SI 2006/2695, art 2.

5 As to the meaning of 'manufacture' see PARA 96 note 6.

6 Plant Health (Wood Packaging Material Marking) (Forestry) Order 2006, SI 2006/2695, art 9(1). As to the meaning of 'wood packaging material' see PARA 96 note 2.

7 Plant Health (Wood Packaging Material Marking) (Forestry) Order 2006, SI 2006/2695, art 9(2)(a).

8 Plant Health (Wood Packaging Material Marking) (Forestry) Order 2006, SI 2006/2695, art 9(2)(b).

9 Plant Health (Wood Packaging Material Marking) (Forestry) Order 2006, SI 2006/2695, art 9(2)(c).

10 Plant Health (Wood Packaging Material Marking) (Forestry) Order 2006, SI 2006/2695, art 9(2)(d).

11 Plant Health (Wood Packaging Material Marking) (Forestry) Order 2006, SI 2006/2695, art 9(2)(e).

12 Plant Health (Wood Packaging Material Marking) (Forestry) Order 2006, SI 2006/2695, art 9(3).

13 Ie the Plant Health (Wood Packaging Material Marking) (Forestry) Order 2006, SI 2006/2695.

14 Ie without prejudice to the power of the Commissioners under the Plant Health (Wood Packaging Material Marking) (Forestry) Order 2006, SI 2006/2695, art 10: see the text and notes 16-26.

15 Plant Health (Wood Packaging Material Marking) (Forestry) Order 2006, SI 2006/2695, art 9(4).

16 See note 13.

- 17 Plant Health (Wood Packaging Material Marking) (Forestry) Order 2006, SI 2006/2695, art 10(1). As to the meaning of 'approved measure' see PARA 96 note 4.
- 18 Ie under the Plant Health (Wood Packaging Material Marking) (Forestry) Order 2006, SI 2006/2695, art 10: see the text and notes 16-17, 19-26.
- 19 Plant Health (Wood Packaging Material Marking) (Forestry) Order 2006, SI 2006/2695, art 10(2).
- 20 Plant Health (Wood Packaging Material Marking) (Forestry) Order 2006, SI 2006/2695, art 10(3).
- 21 Plant Health (Wood Packaging Material Marking) (Forestry) Order 2006, SI 2006/2695, art 10(4).
- 22 Plant Health (Wood Packaging Material Marking) (Forestry) Order 2006, SI 2006/2695, art 10(5).
- 23 See note 13.
- 24 Plant Health (Wood Packaging Material Marking) (Forestry) Order 2006, SI 2006/2695, art 10(6).
- 25 Plant Health (Wood Packaging Material Marking) (Forestry) Order 2006, SI 2006/2695, art 10(7).
- 26 Plant Health (Wood Packaging Material Marking) (Forestry) Order 2006, SI 2006/2695, art 10(8).
- 27 As to the meaning of 'wood packaging material manufacturer' see PARA 97 note 1.
- 28 As to the meaning of 'certificate' see PARA 96 note 1.
- 29 Plant Health (Wood Packaging Material Marking) (Forestry) Order 2006, SI 2006/2695, art 11(1)(a).
- 30 Plant Health (Wood Packaging Material Marking) (Forestry) Order 2006, SI 2006/2695, art 11(1)(b).
- 31 Plant Health (Wood Packaging Material Marking) (Forestry) Order 2006, SI 2006/2695, art 11(1)(c). As to the statutory provisions see note 13.
- 32 Plant Health (Wood Packaging Material Marking) (Forestry) Order 2006, SI 2006/2695, art 11(1).
- 33 Plant Health (Wood Packaging Material Marking) (Forestry) Order 2006, SI 2006/2695, art 11(2).

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99. Offences.

A person is guilty of an offence¹:

- 330 (1) if, for the purposes of procuring the issue of a certificate², he:
 31
 51. (a) makes a statement which he knows to be false in a material particular³;
 52. (b) recklessly makes a statement which is false in a material particular⁴; or
 53. (c) intentionally fails to disclose any material information⁵;
 32
 331 (2) if he:
 33
 54. (a) dishonestly alters a certificate⁶; or
 55. (b) dishonestly creates an instrument which purports to be a certificate⁷;
 34
 332 (3) if, without reasonable excuse, proof of which lies on him, he:
 35
 56. (a) contravenes or fails to comply with any restrictions⁸ on marking wood packaging material⁹;
 57. (b) contravenes or fails to comply with a notice¹⁰ prohibiting the movement or use of seized items¹¹; or
 58. (c) intentionally obstructs an inspector¹² in the exercise of his statutory¹³ powers¹⁴.
 36

1 A person guilty of an offence under these provisions is liable on summary conviction to a fine not exceeding level 5 on the standard scale: Plant Health (Wood Packaging Material Marking) (Forestry) Order 2006, SI 2006/2695, art 12(8). As to the standard scale see PARA 32 note 6. Where a body corporate is guilty of such an offence, and that offence is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of, any director, manager or secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he, as well as the body corporate, is guilty of the offence and is liable to be proceeded against and punished accordingly: art 12(4). For these purposes, 'director' in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate: art 12(5). Where the commission by any person of an offence under heads (1) to (3) in the text is due to the act or default of some other person, that other person may be charged with and convicted of the offence by virtue of this provision whether or not proceedings for the offence are taken against the first-mentioned person: art 12(7).

2 Ie under the Plant Health (Wood Packaging Material Marking) (Forestry) Order 2006, SI 2006/2695: see PARA 96 et seq. As to the meaning of 'certificate' see PARA 96 note 1.

3 Plant Health (Wood Packaging Material Marking) (Forestry) Order 2006, SI 2006/2695, art 12(1)(a).

4 Plant Health (Wood Packaging Material Marking) (Forestry) Order 2006, SI 2006/2695, art 12(1)(b).

5 Plant Health (Wood Packaging Material Marking) (Forestry) Order 2006, SI 2006/2695, art 12(1)(c).

6 Plant Health (Wood Packaging Material Marking) (Forestry) Order 2006, SI 2006/2695, art 12(2)(a).

7 Plant Health (Wood Packaging Material Marking) (Forestry) Order 2006, SI 2006/2695, art 12(2)(b).

8 le he contravenes or fails to comply with any provision in the Plant Health (Wood Packaging Material Marking) (Forestry) Order 2006, SI 2006/2695, art 3: see PARA 96. As to the meaning of 'wood packaging material' see PARA 96 note 2.

9 Plant Health (Wood Packaging Material Marking) (Forestry) Order 2006, SI 2006/2695, art 12(3)(a).

10 le a notice served under the Plant Health (Wood Packaging Material Marking) (Forestry) Order 2006, SI 2006/2695, art 10(3): see PARA 98.

11 Plant Health (Wood Packaging Material Marking) (Forestry) Order 2006, SI 2006/2695, art 12(3)(b).

12 As to the meaning of 'inspector' see PARA 98 note 3.

13 le his powers under the Plant Health (Wood Packaging Material Marking) (Forestry) Order 2006, SI 2006/2695: see PARA 96 et seq. As to the enforcement powers of inspectors see PARA 98.

14 Plant Health (Wood Packaging Material Marking) (Forestry) Order 2006, SI 2006/2695, art 12(3)(c).

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(iii) Forest Reproductive Material

A. FOREST REPRODUCTIVE MATERIAL AND APPROVAL OF BASIC MATERIAL FOR ENTRY IN THE NATIONAL REGISTER

100. Introductory.

The Forest Reproductive Material (Great Britain) Regulations 2002¹ implement a European Council Directive on the marketing of forest reproductive material². The regulations do not apply to forest reproductive material intended for export or re-export to third countries³.

'Forest reproductive material' means reproductive material⁴ of specified⁵ tree species and artificial hybrids⁶, and must be categorised as:

- 333 (1) 'source-identified'⁷;
- 334 (2) 'selected'⁸;
- 335 (3) 'qualified'⁹; or
- 336 (4) 'tested'¹⁰,

according to whether the basic material from which it is derived meets the prescribed requirements¹¹ for the relevant category¹².

Forest reproductive material intended for purposes other than forestry which is in the form of planting stock or parts of plants is, however, exempted from these requirements¹³, and where a supplier¹⁴ markets forest reproductive material both for forestry and other purposes, material exempted by virtue of this provision must be accompanied by a label or document bearing the statement 'Not for forestry purposes', unless it is plain from a label accompanying it, in compliance, where applicable, with any United Kingdom¹⁵ or European Community legal requirement, that the material is not intended for forestry purposes¹⁶.

¹ Ie the Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026: see the text and notes 3-16; and PARA 101 et seq.

² Ie EC Council Directive 1999/105 (OJ L11, 15.1.2000, p 17) on the marketing of forest reproductive material.

³ Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 3. 'Third countries' means countries which are not member states of the European Union: reg 2(2). References to 'member states' and the 'European Community' are to be construed as including the Channel Islands and the Isle of Man: reg 2(5).

⁴ 'Reproductive material' means material which is derived from basic material and is in one of the forms defined in the Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 2(4); and 'basic material' means material from which reproductive material may be collected or produced and which is in the form of one of the types defined in reg 2(3): reg 2(2). In respect of basic material: (1) 'clonal mixture' means a mixture of identified clones in known proportions; (2) 'clone' means a group of individuals (referred to as 'ramets') derived originally from a single individual (referred to as an 'ortet') by means of vegetative propagation, such as cuttings, micropropagation, grafts, layers or divisions; (3) 'parents of family' means trees used to obtain progeny by controlled or open pollination of one identified parent used as a female; (4) 'seed orchard' means a plantation of selected clones or families which is isolated or managed so as to avoid or reduce

pollination from outside sources, and managed so as to produce frequent, abundant and easily collected crops of seed; (5) 'seed source' means trees within an area from which seed is collected; and (6) 'stand' means a delineated population of trees possessing at least a moderate degree of uniformity in composition: reg 2(3). In respect of reproductive material, 'parts of plants' means (a) buds; (b) cuttings of stem, leaf or root; (c) explants or embryos for micropropagation; (d) layers; (e) roots; (f) scions; (g) sets; and (h) any other part of a plant intended for the production of planting stock; 'planting stock' means plants which are produced from seed units or from parts of plants, or which originated by natural regeneration; and 'seed unit' means cones, infructescences, fruits and seeds intended for the production of planting stock: reg 2(4). 'Infructescence' is a type of seed unit and means a group of fruits formed on a single inflorescence: reg 2(2). 'Collecting' includes the taking of parts of plants, extraction of seed, and harvesting, and 'collect', 'collection' and 'collected' are to be construed accordingly; and 'production' includes all stages in: (i) the generation of a seed unit and, where the seed unit is not already a seed, the conversion from seed unit to seed, and (ii) the raising of planting stock from seed units and parts of plants, and 'produced' is to be construed accordingly: reg 2(2).

5 The tree species and artificial hybrids listed in the Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, Sch 1. Those species and hybrids are as follows: *Abies alba* Mill; *Abies cephalonica* Loud; *Abies grandis* Lindl; *Abies pinsapo* Boiss; *Acer platanoides* L; *Acer pseudoplatanus* L; *Alnus glutinosa* Gaertn; *Alnus incana* Moench; *Betula pendula* Roth; *Betula pubescens* Ehrh; *Carpinus betulus* L; *Castanea sativa* Mill; *Cedrus atlantica* Carr; *Cedrus libani* A Richard; *Fagus sylvatica* L; *Fraxinus angustifolia* Vahl; *Fraxinus excelsior* L; *Larix decidua* Mill; *Larix x eurolepis* Henry; *Larix kaempferi* Carr; *Larix sibirica* Ledeb; *Picea abies* Karst; *Picea sitchensis* Carr; *Pinus brutia* Ten; *Pinus pinea* L; *Pinus radiata* D Don; *Pinus sylvestris* L; *Prunus avium* L; *Populus* spp; *Pseudotsuga menziesii* Franco; *Quercus cerris* L; *Quercus ilex* L; *Quercus petraea* Liebl; *Quercus pubescens* Willd; *Quercus robur* L; *Quercus rubra* L; *Quercus suber* L; *Robinia pseudoacacia* L; *Tilia cordata* Mill; *Tilia platyphyllos* Scop: Sch 1. *Populus* spp includes all species of the genus, including artificial hybrids: reg 2(2).

6 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 2(2).

7 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 4(1)(a). 'Source-identified' material must be so categorised if the basic material from which it is derived meets the requirements of Sch 2: reg 4(1)(a). Those requirements are that: (1) the basic material must be a seed source or stand located within a single region of provenance; (2) the applicant must inform the Forestry Commissioners of the region of provenance and the location and the altitude or altitudinal range of the place(s) where the reproductive material is to be collected or otherwise harvested; (3) the applicant must inform the Commissioners or their authorised officer whether the basic material is: (a) autochthonous; (b) indigenous; (c) neither (in which case the origin must be stated if known); or (d) the origin is unknown: Sch 2 paras 1-2. 'Provenance' means the place in which any stand of trees is growing or where a seed source is located; 'region of provenance' means, in respect of a species or sub-species, an area demarcated pursuant to reg 5 by the Commissioners or in accordance with EC Council Directive 1999/105 (OJ L11, 15.1.2000, p 17) art 9 by another official body, in which stands or seed sources showing similar phenotypic or genetic character are found, or a group of such areas subject to uniform or similar ecological conditions; and 'authorised officer' means a person authorised by the Commissioners to exercise their powers and execute their functions under the Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026: reg 2(2). 'Autochthonous' means, in relation to a stand or seed source, either: (i) that it has been continuously regenerated by natural regeneration; or (ii) that it has been regenerated artificially from: (A) reproductive material collected in the same stand or seed source; or (B) from other stands or seed sources within close proximity meeting the descriptions in head (i) or head (ii)(A) above: reg 2(2). 'Indigenous' in respect of a stand or seed source means that it is an autochthonous stand or seed source, or has been raised artificially from seed, the origin of which is situated in the same region of provenance; and 'origin' means, in respect of an autochthonous stand or seed source, the place in which the trees are growing, and in respect of any other stand or seed source, the place from which the seed or plants in the stand or seed source were originally introduced: reg 2(2). 'Official body' in respect of other member states has the meaning given to it in EC Council Directive 1999/105 (OJ L11, 15.1.2000, p 17) art 2(k) (ie an authority, established or designated by the member state under the supervision of the national government and responsible for questions concerning the control of marketing and/or the quality of forest reproductive material or any state authority established either at national level, or at regional level, under the supervision of national authorities, within the limits set by the constitution of the member state concerned); in respect of Northern Ireland means the Department of Agriculture and Rural Development for Northern Ireland; and in respect of a third country means the body authorised by its national government to be responsible for questions concerning the control of marketing or the quality of forest reproductive material: Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 2(2) (definition substituted by SI 2006/2530). As to the Forestry Commissioners see PARA 34 et seq.

The Commissioners must demarcate regions of provenance in respect of each of the species listed in Sch 1 (see note 5) which exist in Great Britain and must allocate to each region of provenance an identity code: reg 5(1). They must draw up maps showing the demarcated regions of provenance referred to in reg 5(1), distinguishing areas by different altitudes where relevant, and must make such maps available to the public, whether by electronic means or in paper form, upon payment of the prescribed fee, if any: reg 5(2).

8 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 4(1)(b). 'Selected' material must be so categorised if the basic material from which it is derived meets the requirements of Sch 3: reg 4(1)(b). The Commissioners will assess a stand with respect to the purpose specified in the application made under reg 7(7) (see PARA 101) to which the reproductive material produced from it is intended to be put (the 'specified purpose'). They must give due weight to such of the criteria for selection set out in heads (1)-(10) below as are appropriate to the specified purpose: Sch 3. Those criteria relate to (1) origin; (2) isolation; (3) effective size of the population; (4) age and development; (5) uniformity; (6) adaptation; (7) health and resistance; (8) volume production; (9) wood quality; and (10) form or growth habit: see Sch 3.

9 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 4(1)(c) (amended by SI 2006/2530). Subject to reg 4(1A) below, 'qualified' material must be so categorised if the basic material from which it is derived meets the requirements of Sch 4: reg 4(1)(c) (as so amended). Those requirements relate to: (1) seed orchards; (2) parents of family; (3) clones; and (4) clonal mixtures: see the Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, Sch 4 paras 1-4. Basic material of *Pinus pinaster* Ait may, however, be categorised as 'qualified' if the requirement in Sch 4 para (1)(c) is not met, in accordance with EC Commission Regulation 69/2004 (OJ L10, 16.1.2004, p 16) authorising derogations from certain provisions of EC Council Directive 1999/105 (OJ L11, 15.1.2000, p 17) in respect of the marketing of forest reproductive material derived from certain basic material: Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 4(1A) (added by SI 2006/2530).

As to appeals against decisions of the Commissioners under the requirements of Sch 4 paras (1)(d), (2)(d) see PARA 115.

10 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 4(1)(d). 'Tested' material must be so categorised if the basic material from which it is derived meets the requirements of Sch 5: reg 4(1)(d). There are general requirements for all tests, and other requirements for all tests relate to: (1) characters to be examined; (2) documentation; (3) setting up the tests; (4) analysis and validity of results: see Sch 5 para 1. There are also requirements for genetic evaluation of the components of basic material (see Sch 5 para 2) and requirements for comparative testing of reproductive material (see Sch 5 para 3). The requirements of Sch 5 are subject to the discretion of the Commissioners to grant conditional approval under reg 7(2) (see PARA 101): Sch 5 para 4. Nursery, greenhouse and laboratory tests may be accepted by the Commissioners for approval or for conditional approval if they are satisfied that there is a close correlation between the measured trait and the characters which would normally be assessed in forest stage tests; other characters to be tested must meet the requirements set out in Sch 5 para 3: Sch 5 para 5.

As to appeals against decisions of the Commissioners under the requirements of Sch 5 para (1)(d)(ii) or (1)(e)(i) see PARA 115.

11 In the requirements of the Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, Sch 2, Sch 3, Sch 4 or Sch 5: see notes 7-10. In the Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, the 'relevant Schedule' refers, in respect of each category of forest reproductive material described in reg 4(1)(a)-(d), to the Schedule referred to in the sub-paragraph in which the category is described: reg 4(2).

12 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 4(1) (as amended: see note 9).

13 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 34(1).

14 'Supplier' means any person who, acting in the course of a business or trade, whether or not for profit, markets or imports forest reproductive material: Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 2(2). As to the meaning of 'markets' see PARA 103 note 4.

15 As to the meaning of 'United Kingdom' see PARA 2 note 2.

16 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 34(2).

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101. Establishment and maintenance of the National Register and approval of basic material.

The Forestry Commissioners¹ must establish and maintain a register of approved basic material² which is to be known as the National Register of Approved Basic Material for Great Britain (the 'National Register')³. The Commissioners must make the National Register available to the public, whether by electronic means or in paper form, upon payment of the prescribed fee, if any⁴.

The Commissioners may approve basic material where they are satisfied⁵ that it meets the requirements set out in at least one of the relevant Schedules⁶ and in the case of basic material in the form of clones and clonal mixtures⁷, they may give approval which lasts for a specified number of years or to a specified maximum level of production⁸. They may give approval ('conditional approval') lasting for a period of up to ten years in respect of basic material for the production of forest reproductive material⁹ categorised¹⁰ as 'tested' notwithstanding the absence of concluded genetic evaluation or comparative tests, where the Commissioners are satisfied that the provisional results of genetic evaluation or comparative tests¹¹ demonstrate that the basic material is likely to meet the requirements for approval¹² once the genetic evaluation or comparative tests are concluded¹³. They may also, up to and including 31 December 2012, approve basic material for the production of forest reproductive material categorised¹⁴ as 'tested':

- 337 (1) in the case of forest reproductive material of the species and artificial hybrids not previously controlled¹⁵, where concluded comparative test results are obtained using a testing method which does not satisfy the prescribed requirements¹⁶, if such comparative tests begun before 1 January 2003 have shown to the satisfaction of the Commissioners that the reproductive material derived from the basic material is superior to the relevant standard¹⁷; and
- 338 (2) where genetic evaluation test results are obtained using a testing method which does not satisfy the prescribed requirements¹⁸, if such genetic evaluation tests begun before 1 January 2003 have shown to the satisfaction of the Commissioners that the reproductive material derived from the basic material is superior to the relevant reference population¹⁹.

Basic material consisting of a genetically modified organism²⁰ must not be approved under these provisions unless the Commissioners are satisfied that it is safe for human health and the environment²¹ and the basic material has been authorised in accordance with the relevant²² European Directive²³.

Subject to any permitted exceptions²⁴:

- 339 (a) the following categories of person may seek approval of basic material under these provisions:
- 37 59. (i) the owner²⁵ of the basic material for which approval is sought²⁶; or

60. (ii) a person authorised in writing by the owner of the basic material for which approval is sought²⁷;
- 38
- 340 (b) persons seeking approval of basic material under these provisions must apply in writing to the Commissioners, providing the following particulars and documentation:
- 39
61. (i) the applicant's name, address and contact details²⁸;
62. (ii) if the applicant is not the owner of the basic material, the name and address of the owner, and the written authority referred to in head (a)(ii) above²⁹;
63. (iii) the Ordnance Survey grid reference for the location of the basic material, together with a copy of a map drawn on a scale of 1:10,000 showing clearly its location³⁰;
64. (iv) the category³¹ of forest reproductive material which it is proposed be derived from the basic material for which approval is sought³²; and
65. (v) the documentation referred to and the information required of the applicant in the relevant Schedule³³ for the category of forest reproductive material referred to in head (iv) above³⁴.
- 40

An applicant under head (a) above must:

- 341 (A) pay to the Commissioners the prescribed fee, if any, which must accompany his application³⁵;
- 342 (B) furnish the Commissioners with such further documentation which demonstrates or pertains to the eligibility of the basic material for approval as they may request³⁶; and
- 343 (C) provide for access by the Commissioners, should they so require, to inspect the basic material the subject of the application when considering whether to approve the basic material³⁷.

Basic material which is approved in accordance with these provisions must be entered by the Commissioners in the National Register by reference to a unit of approval to which they must allocate a unique register reference³⁸. In the case of material whose approval³⁹ is limited in time or otherwise qualified, the date on which the approval is to end, or other qualification as is appropriate, must be entered in the National Register in respect of that unit of approval⁴⁰. In the case of approval being given of basic material intended for the production of forest reproductive material of the category 'selected'⁴¹, where approval has been granted for a specified purpose⁴², the specified purpose must be entered in the National Register by the Commissioners⁴³.

A seed orchard⁴⁴ which has been approved as basic material intended for the production of forest reproductive material of the category 'qualified'⁴⁵ must be managed and its seed harvested in such a way that the specified objective⁴⁶ of the orchard is attained⁴⁷. An applicant who obtains approval of basic material other than in the form of a seed source⁴⁸ approved for the production of forest reproductive material of the category 'source-identified'⁴⁹ or a seed orchard or parent of family⁵⁰ approved for the production of forest reproductive material of the category 'qualified' must notify the Commissioners in writing of the following alterations in respect of that basic material no later than 28 days before the date on which a collection notifiable to the Commissioners⁵¹ is to take place, namely a reduction in area or a material change in the composition or stocking of the basic material⁵².

1 As to the Forestry Commissioners see PARA 34 et seq.

- 2 As to the meaning of 'basic material' see PARA 100 note 4.
- 3 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 6(1).
- 4 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 6(2).
- 5 Is subject to the Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 7(2)-(4): see the text and notes 9-23.
- 6 Is in at least one of the Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, Schs 2-5: see PARA 100 notes 7-10.
- 7 As to the meanings of 'clone' and 'clonal mixture' see PARA 100 note 4.
- 8 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 7(1). As to appeals against decisions under reg 7(1)-(3) see PARA 115.
- 9 As to the meaning of 'forest reproductive material' see PARA 100; as to the meaning of 'reproductive material' see PARA 100 note 4.
- 10 Is pursuant to the Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 4(1)(d): see PARA 100 note 10.
- 11 Is referred to in the Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, Sch 5: see PARA 100 note 10.
- 12 Is under the Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026: see PARAS 100, 102 et seq.
- 13 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 7(2); and see note 8.
- 14 See note 10.
- 15 Is by the Forest Reproductive Material Regulations 1977, SI 1977/891, or the Forest Reproductive Material Regulations 1973, SI 1973/944 (both revoked).
- 16 Is the requirements set out in the Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, Sch 5: see PARA 100 note 10.
- 17 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 7(3)(a). The 'relevant standard' is that provided for in Sch 5.
- 18 See note 16.
- 19 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 7(3)(b). The 'relevant reference population' is that provided for in Sch 5.
- 20 For these purposes, 'genetically modified organism' has the meaning given to it in European Parliament and EC Council Directive 2001/18 (OJ L106, 17.4.2001, p 1) on the deliberate release into the environment of genetically modified organisms, art 2(1), (2) (ie an organism, with the exception of human beings, in which the genetic material has been altered in a way that does not occur naturally by mating and/or natural recombination), unless in reference to a requirement under the Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 7(4) for authorisation to have been given before 17 October 2002, when it has the meaning given it in EEC Council Directive 90/220 (OJ L117, 8.5.90, p 15), art 2(1), (2) (repealed): Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 2(2).
- 21 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 7(4)(a).
- 22 Is in accordance with European Parliament and EC Council Directive 2001/18 (OJ L106, 17.4.2001, p 1), or in the case of material authorised prior to 17 October 2002, in accordance with EEC Council Directive 90/220 (OJ L117, 8.5.90, p 15) (repealed).
- 23 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 7(4)(b).
- 24 Is any exceptions permitted under the Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 7(9). Nothing in reg 7 prevents the Commissioners, where they judge it appropriate in all the circumstances, from accepting an application for approval which does not fully comply with reg 7(6), (7), and in

the case of such an application in which not all owners have joined, from treating those applicants together as the 'owner' for the purposes of regs 9(1), (7), (10) and (11) (see PARA 102): reg 7(9).

25 For these purposes, 'owner' means, in the case of basic material which is owned by more than one person, all the owners of the material acting together: regs 2(2), 7(6); but see note 24.

26 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 7(6)(a).

27 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 7(6)(b).

28 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 7(7)(a). 'Contact details' means a person's telephone number, if he has one, and, where he may be contacted by other telephonic or electronic communication, his fax number and/or email address: Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 2(2).

29 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 7(7)(b).

30 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 7(7)(c).

31 'Category' in respect of forest reproductive material means one of the categories listed in the Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 4(1) (see PARA 100): reg 2(2).

32 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 7(7)(d).

33 As to the meaning of 'relevant Schedule' see PARA 100 note 11.

34 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 7(7)(e).

35 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 7(8)(a).

36 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 7(8)(b).

37 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 7(8)(c).

38 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 7(5). Basic material approved and registered under the Forest Reproductive Material Regulations 1977, SI 1977/891, or the Forest Reproductive Material Regulations 1973, SI 1973/944 (both revoked) in the National Register of Basic Material for the Production of Forest Reproductive Material established under the Forest Reproductive Material Regulations 1973, SI 1973/944, reg 5(1) (revoked), is approved basic material within the meaning of the 2002 Regulations, is to be deemed to have been entered in the National Register created by those 2002 Regulations and must also be allocated a unique register reference by the Commissioners: Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 7(10).

39 Ie under the Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 7(1) or (2): see the text and notes 5-13.

40 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 7(5)(a).

41 As to the category 'selected' see PARA 100 text and note 8.

42 Ie within the meaning of the Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, Sch 3: see PARA 100 note 8.

43 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 7(5)(b).

44 As to the meaning of 'seed orchard' see PARA 100 note 4.

45 As to the category 'qualified' see PARA 100 text and note 9.

46 Ie the objective referred to in the Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, Sch 4 para (a): see PARA 100 note 9.

47 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 8(1).

48 As to the meaning of 'seed source' see PARA 100 note 4.

49 As to the category 'source-identified' see PARA 100 text and note 7.

50 As to the meaning of 'parent of family' see PARA 100 note 4.

51 le pursuant to the Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 11: see PARA 103.

52 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 8(2). Contravention of reg 8(2) is an offence: see PARA 114.

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102. Withdrawal and amendment of approval of basic material.

The Forestry Commissioners¹ must periodically re-inspect approved basic material² from which forest reproductive material³ of the categories 'selected', 'qualified' and 'tested'⁴ may be derived, and the owner⁵ of such material must provide for arrangements for such re-inspections to be made upon the Commissioners giving the owner at least 14 days' written notice⁶.

An applicant⁷ who has obtained conditional approval of basic material⁸ must notify the Commissioners in writing of results of genetic evaluation or concluded comparative testing in respect of that basic material no later than 28 days after obtaining such results⁹; and an applicant¹⁰ who has obtained approval of basic material for production¹¹ of forest reproductive material of the category 'qualified' must:

- 344 (1) in respect of seed orchards¹², write to the Commissioners seeking their approval in writing for changes in the type, objective, crossing design¹³ and field layout, components, isolation or location no later than 28 days after such changes take effect¹⁴;
- 345 (2) in respect of seed orchards, notify the Commissioners in writing of thinning of the seed orchard, and the selection criteria used for such thinning, no later than 28 days after the thinning is carried out¹⁵; and
- 346 (3) in respect of parents of family¹⁶, write to the Commissioners seeking their approval in writing for significant changes in the objective, crossing design and pollination system, components, isolation or location no later than 28 days after such changes take effect¹⁷.

Where the Commissioners decline to approve changes referred to in head (1) and head (3) above, they may, after giving 14 days' notice in writing¹⁸, withdraw approval of the basic material the subject of the changes, and remove the relevant unit of approval¹⁹ from the National Register²⁰.

The Commissioners may, after giving 14 days' notice in writing specifying their reasons for doing so, withdraw approval granted²¹ in respect of any basic material and remove the relevant unit of approval from the National Register if they are satisfied that any of the prescribed requirements²² are not met in respect of that basic material²³.

Where approval of basic material:

- 347 (a) is given for a specific period²⁴ and has not been withdrawn for any other reason²⁵, approval must automatically be withdrawn at the end of that specific period, and the Commissioners must remove the unit of approval from the National Register²⁶;
- 348 (b) in the form of clones or clonal mixtures²⁷ is limited to a specific level of production²⁸:

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- 66. (i) the applicant²⁹ who has obtained such approval must inform the Commissioners in writing no later than 28 days after the level of production reaches that specific level of production³⁰; and

67. (ii) the Commissioners must, on receipt of such information, withdraw approval, remove the unit of approval from the National Register, and write to the applicant confirming the action they have taken³¹.

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Upon withdrawing approval of any basic material and removing the relevant unit of approval from the National Register³², the Commissioners may, without further application by the owner or other person authorised by the owner of that basic material, approve that material for the production of forest reproductive material of another of the specified categories³³ and re-enter that basic material in the National Register ('amend approval') if they are satisfied that the requirements of the relevant Schedule³⁴ for that other category are met³⁵. Where the Commissioners amend approval of basic material pursuant to this provision, they must write to the owner and, in the case of basic material which was first approved upon the application of another person authorised by the owner, to that other person, informing him, or them as appropriate, of the fact³⁶.

1 As to the Forestry Commissioners see PARA 34 et seq.

2 'Approved basic material' means basic material which is approved in accordance with the Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 7 (see PARA 101): reg 2(2). As to the meaning of 'basic material' see PARA 100 note 4.

3 As to the meaning of 'forest reproductive material' see PARA 100.

4 As to the categories 'selected', 'qualified' and 'tested' see PARA 100 text and notes 8-10.

5 As to the meaning of 'owner' see PARA 101 note 25.

6 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 9(1). Notice required to be given in writing is to be deemed to have been given in the case of delivery by hand, on the day of delivery to the intended recipient's last known address; or in the case of notice sent by post, one day after sending by first class post to the intended recipient's last known address: reg 33.

As to appeals against decisions under reg 9 (except for reg 9(8) and (9)) see PARA 115.

7 I.e. an applicant under the Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 7(7): see PARA 101.

8 I.e. under the Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 7(2): see PARA 101.

9 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 9(2); and see note 6. Contravention of reg 9(2) is an offence: see PARA 114.

10 See note 7.

11 As to the meaning of 'production' see PARA 100 note 4.

12 As to the meaning of 'seed orchard' see PARA 100 note 4.

13 'Crossing design' means the method by which individual trees used as female parents are pollinated, whether naturally or artificially, by one or more trees used as male parents: Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 2(2).

14 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 9(3)(a). Contravention of reg 9(3) is an offence: see PARA 114.

15 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 9(3)(b). See note 14.

16 As to the meaning of 'parent of family' see PARA 100 note 4.

17 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 9(3)(c). See note 14.

18 Notice required under the Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 9(4)-(6) (see the text and notes 19-23) must be given to the owner of the basic material in respect of which the notice is required, and, in the case of basic material which was first approved upon the application of another person authorised by the owner, notice must also be given to that other person: reg 9(7).

19 'Unit of approval' has the meaning given it in the Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 7(5) (see PARA 101): reg 2(2).

20 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 9(4). As to the National Register see PARA 101.

21 Ie under the Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, Pt II (regs 4-9): see PARAS 100-102.

22 Ie the requirements of the Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 7(1)-(4) or of reg 8: see PARA 101.

23 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 9(5). The Commissioners may also, after giving the like notice, withdraw approval granted under the Forest Reproductive Material Regulations 1977, SI 1977/891, or the Forest Reproductive Material Regulations 1973, SI 1973/944 (both revoked) and remove the relevant unit of approval from the National Register if they are satisfied that the basic material the subject of the approval does not meet the requirements of the relevant Schedule for the category of forest reproductive material in respect of which the basic material has been entered in the National Register: Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 9(6). See also note 34.

24 Ie under the Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 7(1) or (2): see PARA 101.

25 Ie under the Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 9.

26 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 9(8).

27 As to the meanings of 'clone' and 'clonal mixture' see PARA 100 note 4.

28 Ie under the Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 7(1): see PARA 101.

29 Ie the applicant under the Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 7(7).

30 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 9(9)(a). Contravention of reg 9(9)(a) is an offence: see PARA 114.

31 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 9(9)(b).

32 Ie under the Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 9(4)-(6): see the text and notes 19-23.

33 Ie the categories referred to in the Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 4(1): see PARA 100.

34 As to the meaning of the 'relevant Schedule' see PARA 100 note 11.

35 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 9(10).

36 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 9(11).

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B. COLLECTION AND PRODUCTION OF FOREST REPRODUCTIVE MATERIAL

103. Collection and production of forest reproductive material for marketing.

Unless acting under a licence¹, no person must collect² or produce forest reproductive material³ for the purpose of marketing⁴ or for use in the production⁵ of forest reproductive material which is to be marketed unless he does so from approved basic material⁶ and in accordance with the relevant⁷ statutory provisions⁸.

Any person proposing to collect, or cause to be collected, forest reproductive material for the purpose of marketing or for use in the production of forest reproductive material which is to be marketed must notify the Forestry Commissioners⁹ in writing at least 14 days before the proposed collection, providing the following particulars and documentation:

- 349 (1) his name, address and contact details¹⁰;
- 350 (2) the place of collection¹¹;
- 351 (3) the unique register reference or references allocated to the approved basic material from which the forest reproductive material is to be collected, or, in the case of forest reproductive material of the category 'source-identified'¹², the region of provenance¹³; and
- 352 (4) the proposed date, time and anticipated duration of the collection¹⁴,

and must afford the Commissioners or persons acting on the Commissioners' behalf such reasonable facilities as they may require to observe the collection so notified¹⁵; but this does not apply to the extraction of seed from cones or fruits¹⁶.

Subsequent multiplication by vegetative propagation¹⁷ from a single unit of approval¹⁸ may be used for the production of forest reproductive material only in the categories 'selected', 'qualified' and 'tested'¹⁹.

¹ ie a licence granted pursuant to the Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 18: see PARA 107.

² As to the meaning of 'collect' see PARA 100 note 4.

³ As to the meaning of 'forest reproductive material' see PARA 100.

⁴ 'Marketing' means: (1) displaying with a view to sale; (2) offering for sale; (3) selling; or (4) delivering under a contract (other than where an agent delivers to his principal items procured on the principal's behalf), including a contract for the supply of services, and 'market' and 'marketed' are to be construed accordingly: Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 2(2).

⁵ As to the meaning of 'production' see PARA 100 note 4.

⁶ As to the meaning of 'approved basic material' see PARA 102 note 2.

⁷ ie in accordance with the provisions of the Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, Pt III (regs 10-15): see PARAS 103-105.

- 8 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 10.
- 9 As to the Forestry Commissioners see PARA 34 et seq.
- 10 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 11(1)(a). As to the meaning of 'contact details' see PARA 101 note 28.
- 11 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 11(1)(b).
- 12 As to the category 'source-identified' see PARA 100 text and note 7.
- 13 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 11(1)(c). As to the meaning of 'region of provenance' see PARA 100 note 7.
- 14 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 11(1)(d).
- 15 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 11(1). Regulation 27(2), (3) (see PARA 113) applies when the Commissioners or other persons on their behalf attend to observe a collection as provided for in reg 11(1) as if the attendance were an inspection carried out under reg 27(1): reg 11(2).
- 16 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 11(3).
- 17 'Subsequent multiplication by vegetative propagation' means propagation by vegetative methods from forest reproductive material in respect of which a master certificate has been issued or sought: Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 2(2). As to master certificates see PARA 104.
- 18 As to the meaning of 'unit of approval' see PARA 102 note 19.
- 19 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 12. As to the categories 'selected', 'qualified' and 'tested' see PARA 100 text and notes 8-10.

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104. Master certificates.

The owner¹ of any forest reproductive material² intended to be marketed³ which has been collected⁴ from approved basic material⁵ in accordance with the prescribed requirements⁶ or which is in the form of seed which has been extracted from cones or fruit so collected from approved basic material, must within nine months of the date of the collection apply to the Forestry Commissioners⁷ in writing for the issue of a master certificate⁸ in respect of that material, providing the following particulars⁹:

- 353 (1) the owner's name, address and contact details¹⁰;
- 354 (2) a description of the forest reproductive material collected, namely:
43
 - 68. (a) botanical name¹¹;
 - 69. (b) nature and category¹²; and
 - 70. (c) quantity of material¹³ for which the certificate is sought¹⁴;
- 44 355 (3) the type of basic material from which it is derived¹⁵;
- 356 (4) the unique register reference for the basic material from which it is derived¹⁶; and
- 357 (5) such other information as may be necessary to enable the Commissioners to complete the form on which the master certificate is¹⁷ to be issued¹⁸.

The owner of forest reproductive material produced by means of permitted¹⁹ subsequent multiplication by vegetative propagation²⁰ must within two months from the date the material used in such propagation is first collected apply for a new master certificate in respect of the forest reproductive material so produced, providing the particulars required under heads (1) to (5) above and stating that it has been produced by such means²¹.

The owner of forest reproductive material which is produced by mixing forest reproductive material from approved basic material²² must within two months from the date of mixing the material apply to the Commissioners for a master certificate in respect of the mixture so produced:

- 358 (i) providing the particulars required under heads (1) to (5) above²³;
- 359 (ii) stating the register references of each of the components of the mixture in the case of certain permitted²⁴ mixtures²⁵; and
- 360 (iii) stating the years of ripening and the proportion of material from each year in the case of other permitted²⁶ mixtures²⁷.

Any application required under these provisions to be made by an owner of forest reproductive material may be made by a person who is not the owner of the material if that person has the written authority of the owner to do so, and if he provides at the time of making such an application details of the owner's name and address, and a copy of the written authority²⁸.

The Commissioners must issue to the owner, or other applicant authorised by the owner, of any forest reproductive material which they are satisfied has been collected or produced for purposes of marketing in accordance with the relevant statutory requirements²⁹ a master

certificate³⁰ in respect of the forest reproductive material and must allocate to each certificate its own number³¹.

- 1 As to the meaning of 'owner' see PARA 101 note 25.
- 2 As to the meaning of 'forest reproductive material' see PARA 100.
- 3 As to the meaning of 'marketed' see PARA 103 note 4.
- 4 As to the meaning of 'collected' see PARA 100 note 4.
- 5 As to the meaning of 'approved basic material' see PARA 102 note 2.
- 6 Ie in accordance with the Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 11: see PARA 103.
- 7 As to the Forestry Commissioners see PARA 34 et seq.
- 8 'Master certificate' means, in the case of forest reproductive material collected or otherwise derived from basic material which is located in: (1) Great Britain, a master certificate issued in accordance with the Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 7(4), (6) and (7) (see PARA 101) in the form required under reg 13(8) (see note 30); (2) Northern Ireland, a master certificate issued by the official body in accordance with EC Council Directive 1999/105 (OJ L11, 15.1.2000, p 17) art 12; (3) another member state, a master certificate issued by the official body of that member state in accordance with art 12; and (4) a third country, an official certificate: Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 2(2) (definition substituted by SI 2006/2530). As to the meaning of 'official body' see PARA 100 note 7; 'official certificate', in relation to forest reproductive material collected or otherwise derived from basic material which is located in a third country, means an official statement or other document, issued by the official body of that third country, accepted by the Commissioners in accordance with the Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 25(3) (see PARA 111): reg 2(2) (definition as so substituted). As to the meaning of 'basic material' see PARA 102 note 2.
- 9 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 13(1).
- 10 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 13(2)(a). As to the meaning of 'contact details' see PARA 101 note 28.
- 11 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 13(2)(b)(i).
- 12 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 13(2)(b)(ii).
- 13 Ie as defined in the Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 13(3). 'Quantity of material' refers in reg 13(2)(b)(iii): (1) in the case of seeds to their weight, and where those seeds have been extracted from cones or infructescences, additionally, to the volume of cones or fruit from which the seeds were extracted; and (2) in the case of parts of plants, to their number: reg 13(3). As to the meanings of 'parts of plants' and 'infructescence' see PARA 100 note 4.
- 14 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 13(2)(b)(iii).
- 15 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 13(2)(c).
- 16 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 13(2)(d).
- 17 Ie in accordance with the Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 13(8): see note 30.
- 18 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 13(2)(e).
- 19 Ie permitted in accordance with the Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 12: see PARA 103.
- 20 As to the meaning of 'subsequent multiplication by vegetative propagation' see PARA 103 note 17.
- 21 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 13(4).
- 22 Ie as permitted under the Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 15(3), (4): see PARA 105.

23 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 13(5)(a).

24 Is permitted under the Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 15(3).

25 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 13(5)(b).

26 Is permitted under the Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 15(4).

27 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 13(5)(c).

28 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 13(6).

29 Is in accordance with the Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, Pt III (regs 10-15): see PARAS 103-105.

30 A master certificate issued under the Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 13 must take the form of the document set out in: (1) Sch 6, where the forest reproductive material to be certified is derived from seed sources or stands; (2) Sch 7, where the forest reproductive material to be certified is derived from seed orchards or parents of family; and (3) Sch 8, where the forest reproductive material to be certified is derived from clones or clonal mixtures: reg 13(8).

A master certificate issued in respect of forest reproductive material produced by mixing permitted under reg 15(3) (see PARA 105) from seed sources and stands in the category 'source-identified' must certify such forest reproductive material as 'reproductive material derived from a seed source' (reg 13(9)); and a master certificate issued in respect of forest reproductive material produced from mixing permitted under reg 15(3) of reproductive material derived from basic material which is neither autochthonous nor indigenous with basic material of unknown origin must certify such forest reproductive material as being 'of unknown origin' (reg 13(10)). As to the meanings of 'seed sources', 'stands', 'seed orchards', 'parents of family', 'clone' and 'clonal mixture' see PARA 100 note 4; as to the meanings of 'autochthonous' and 'indigenous' see PARA 100 note 7; and as to the category 'source-identified' see PARA 100 text and note 7.

31 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 13(7). As to appeals against decisions under reg 13(7) see PARA 115.

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105. Identification and separation of forest reproductive material during production; permitted mixing of forest reproductive material.

Except for material which is mixed in accordance with the provisions set out below¹, no person must keep forest reproductive material² at any stage of production³, including collection⁴ and during the course of marketing⁵, other than in separate lots in respect of each unit of approval⁶, and distinguished from each other by reference to the following criteria (the 'identification criteria'):

- 361 (1) master certificate code and number (where a certificate has been issued)⁷;
- 362 (2) botanical name⁸;
- 363 (3) category⁹ of forest reproductive material¹⁰;
- 364 (4) whether for multiple forestry purposes or a specific purpose, and if the latter, specifying that purpose¹¹;
- 365 (5) type of basic material¹² from which it is derived¹³;
- 366 (6) either:
 - 45 71. (a) the reference number given to the approved basic material¹⁴ in the National Register¹⁵, or in the case of approved EC basic material or approved Northern Ireland basic material, in the equivalent register drawn up and maintained¹⁶ by the relevant official body¹⁷; or
 - 72. (b) in the case of source-identified¹⁸ and selected¹⁹ forest reproductive material or forest reproductive material which is mixed in accordance with the provisions set out below²⁰, the identity code for the region of provenance²¹ from which the forest reproductive material is derived²²;
- 46 367 (7) in the case of forest reproductive material derived from basic material in the form of a stand or seed source²³, whether the origin of the material is autochthonous²⁴, indigenous²⁵, or neither, or unknown²⁶;
- 368 (8) in the case of seed units²⁷, the year of ripening²⁸;
- 369 (9) the age and type of planting stock²⁹ of seedlings or cuttings, whether undercuts, transplants or containerised³⁰;
- 370 (10) whether the forest reproductive material is genetically modified or derived from basic material which consists of a genetically modified organism³¹; and
- 371 (11) in the case of mixed forest reproductive material permitted under the provisions set out below³², clear identification of the components of the forest reproductive material so mixed³³.

Without prejudice to the requirements of heads (1) to (11) above, in the case of forest reproductive material which is produced³⁴ by subsequent multiplication by vegetative propagation³⁵, forest reproductive material must be kept in separate lots from other forest reproductive material produced from such propagation from the same basic material carried out on other occasions³⁶.

The identification criteria and the information required under these provisions must be documented either by labelling which clearly distinguishes each lot, or by any other method which has been approved by the Forestry Commissioners³⁷ in writing prior to its use³⁸.

Forest reproductive material in respect of which a master certificate has been obtained³⁹ may be mixed during production to create a single lot in one of the following ways⁴⁰:

- 372 (i) forest reproductive material may be mixed where it is derived from two or more units of approval within a single region of provenance and where the units of approval each fall within one of the categories 'source-identified' or 'selected'⁴¹; or
- 373 (ii) forest reproductive material of different years of ripening may be mixed where the material is derived from a single unit of approval⁴².

A single lot of mixed forest reproductive material created in accordance with these provisions must be distinguished as a lot by reference to the identification criteria provided for in heads (1) to (11) above⁴³.

- 1 le in accordance with the Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 15: see the text and notes 39-43.
- 2 As to the meaning of 'forest reproductive material' see PARA 100.
- 3 As to the meaning of 'production' see PARA 100 note 4.
- 4 As to the meaning of 'collection' see PARA 100 note 4.
- 5 As to the meaning of 'marketing' see PARA 103 note 4.
- 6 As to the meaning of 'unit of approval' see PARA 102 note 19.
- 7 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 14(1)(a). As to the issuing of master certificates see PARA 104.
- 8 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 14(1)(b).
- 9 As to the meaning of 'category' see PARA 101 note 31.
- 10 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 14(1)(c).
- 11 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 14(1)(d).
- 12 As to the meaning of 'basic material' see PARA 100 note 4.
- 13 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 14(1)(e).
- 14 As to the meaning of 'approved basic material' see PARA 102 note 2.
- 15 As to the National Register see PARA 101.
- 16 le in accordance with EC Council Directive 1999/105 (OJ L11, 15.1.2000, p 17) art 10.
- 17 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 14(1)(f)(i). As to the meaning of 'official body' see PARA 100 note 7.
- 18 As to source-identified forest reproductive material see PARA 100 text and note 7.
- 19 As to selected forest reproductive material see PARA 100 text and note 8.
- 20 See note 1.
- 21 As to the meaning of 'region of provenance' see PARA 100 note 7.
- 22 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 14(1)(f)(ii).

- 23 As to the meanings of 'stand' and 'seed source' see PARA 100 note 4.
- 24 As to the meaning of 'autochthonous' see PARA 100 note 7.
- 25 As to the meaning of 'indigenous' see PARA 100 note 7.
- 26 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 14(1)(g).
- 27 As to the meaning of 'seed unit' PARA 100 note 4.
- 28 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 14(1)(h).
- 29 As to the meaning of 'planting stock' see PARA 100 note 4.
- 30 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 14(1)(i).
- 31 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 14(1)(j). As to the meaning of 'genetically modified organism' see PARA 101 note 20.
- 32 See note 1.
- 33 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 14(1)(k).
- 34 le in accordance with the Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 12: see PARA 103.
- 35 As to the meaning of 'subsequent multiplication by vegetative propagation' see PARA 103 note 17.
- 36 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 14(2).
- 37 As to the Forestry Commissioners see PARA 34 et seq.
- 38 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 14(3).
- 39 le pursuant to the Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026: see PARAS 100 et seq, 106 et seq.
- 40 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 15(1).
- 41 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 15(3).
- 42 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 15(4).
- 43 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 15(2).

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C. REGISTRATION OF SUPPLIERS

106. Registration of suppliers of forest reproductive material.

No person may market¹ or import forest reproductive material² if he does so acting in the course of a business or trade, whether or not for profit, unless his name appears in the Register of Suppliers of Forest Reproductive Material (the 'Register of Suppliers')³. Any person seeking entry of his name in the Register of Suppliers must apply to the Forestry Commissioners⁴ in writing, paying the Commissioners' prescribed fee, if any, and providing the following:

- 374 (1) his name, address and contact details⁵;
- 375 (2) the nature of his business or trade in the course of which he supplies forest reproductive material⁶; and
- 376 (3) if different from the address provided under head (1) above, each address at which he produces, stores or markets forest reproductive material⁷.

The Commissioners must enter in the Register of Suppliers the name of a supplier (a 'registered supplier') whose application has been submitted in accordance with these provisions, except that if they are satisfied that upon their doing so, a breach of the statutory requirements⁸ is likely to occur within a reasonable time after entry of the applicant's name in the Register of Suppliers, or if they are not satisfied that the applicant is or intends to be a supplier or importer of forest reproductive material, they need not enter the applicant's name in the Register of Suppliers, and must instead provide the applicant, within 14 days of reaching such a decision, with written reasons for doing so⁹.

If the Commissioners are satisfied that a breach of the statutory requirements¹⁰ has occurred for which the registered supplier is responsible, they may:

- 377 (a) on giving 28 days' notice in writing specifying their reasons for doing so, remove a registered supplier's name from the Register of Suppliers¹¹; or
- 378 (b) on giving 14 days' notice in writing specifying their reasons for doing so, impose conditions upon the supplier's continuing registration¹².

Where the Commissioners act under head (a) above to remove a supplier's name from the Register of Suppliers or impose conditions on his registration in reliance wholly or partly on seed testing results obtained from an independent third party, they must provide to the supplier when giving notice under head (a) above a copy of those results in documentary form¹³.

The Commissioners must make the Register of Suppliers available for inspection by the public whether by electronic means or in paper form¹⁴.

¹ As to the meaning of 'market' see PARA 103 note 4.

² As to the meaning of 'forest reproductive material' see PARA 100.

- 3 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 16(1). Contravention of reg 16(1) is an offence: see PARA 114.
- 4 As to the Forestry Commissioners see PARA 34 et seq.
- 5 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 16(2)(a). As to the meaning of 'contact details' see PARA 101 note 28.
- 6 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 16(2)(b).
- 7 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 16(2)(c).
- 8 Is a breach of the Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026: see PARAS 100 et seq, 107 et seq.
- 9 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 16(3). As to appeals against decisions under reg 16(3), (4) see PARA 115.
- 10 See note 8.
- 11 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 16(4)(a). See note 9.
- 12 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 16(4)(b). See note 9.
- 13 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 16(5).
- 14 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 16(6).

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D. MARKETING OF FOREST REPRODUCTIVE MATERIAL

107. Forest reproductive material which may be marketed.

Unless authorised by a licence¹, no person may market² forest reproductive material³ unless it meets the prescribed requirements⁴.

Forest reproductive material of specified artificial hybrids⁵ may be marketed only if it is of the categories 'selected', 'qualified' or 'tested'⁶; while vegetatively reproduced forest reproductive material may be marketed only under the categories 'selected', 'qualified' or 'tested' and in the case of forest reproductive material of the category 'selected', may be marketed only if it is produced by means of subsequent multiplication by vegetative propagation⁷ from seeds⁸.

Forest reproductive material derived from basic material⁹:

- 379 (1) in the form of a seed source¹⁰ may be marketed only under the category 'source identified'¹¹;
 - 380 (2) in the form of a stand¹² may be marketed only under the categories 'source identified', 'selected' and 'tested'¹³;
 - 381 (3) of the following types may be marketed only under the categories 'qualified' and 'tested':
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 - 73. (a) seed orchard¹⁴;
 - 74. (b) parents of family¹⁵;
 - 75. (c) clone¹⁶; and
 - 76. (d) clonal mixture¹⁷.
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Forest reproductive material which consists wholly or partly of genetically modified organisms¹⁸ may be marketed only under the category 'tested'¹⁹.

Forest reproductive material in the form of:

- 382 (i) fruit and seed lots of the specified species²⁰ must reach a minimum species purity level of 99 per cent, except in the case of closely related species other than artificial hybrids in respect of which the purity of the fruit or seed lot must be stated in any labelling or record documenting information about the seed required under the relevant²¹ regulations²²;
- 383 (ii) parts of plants²³ must be of fair marketable quality determined with reference to general characteristics, health and appropriate size²⁴;
- 384 (iii) stem cuttings or sets of *Populus* species²⁵ must meet the prescribed standards²⁶;
- 385 (iv) planting stock²⁷ must be of fair marketable quality determined with reference to general characteristics, health, vitality and physiological quality²⁸;
- 386 (v) planting stock which is intended to be marketed to the Mediterranean climatic region²⁹ must comply with the prescribed requirements³⁰.

The Forestry Commissioners³¹ may, however, authorise by licence in writing, whether subject to conditions, for a specified period or indefinitely, the marketing by a registered supplier³² of any forest reproductive material which would otherwise be prohibited under these provisions:

- 387 (A) where the material is marketed for use in tests, selection work, or for scientific or genetic conservation purposes³³; or
- 388 (B) where the material consists of seed units³⁴ which are clearly shown not to be intended for forestry purposes³⁵.

The Commissioners must give reasons in writing upon declining to provide such a licence³⁶.

Contravention of the prohibitions set out above is an offence, as is breach of any condition on which a licence has been granted as described above³⁷.

1 le subject to the Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 18: see the text and notes 31-36.

2 As to the meaning of 'market' see PARA 103 note 4.

3 As to the meaning of 'forest reproductive material' see PARA 100.

4 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 17(1). The prescribed requirements are as follows (reg 17(1) (amended by SI 2006/2530)):

75 (1) (a) its collection and production meet the requirements of the Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, regs 10-12, 14-15 (see PARAS 103, 105); (b) its marketing and labelling meet the requirements of reg 17(2)-(12) (see the text and notes 5-30) and reg 19 (see PARA 108), as read with reg 20 (see PARA 108) in the case of seeds; (c) it is certified in accordance with reg 13 (see PARA 104); and (d) it falls into one of the categories described in reg 4(1) (see PARA 100), subject as the case may be to the application of reg 7(2), (3) (see PARA 101);

76 (2) in the case of forest reproductive material from Northern Ireland or another member state: (a) it has met the requirements as to entry to Great Britain set out in regs 23, 24 (see PARA 110); and (b) after entry to Great Britain it meets the requirements of reg 17, and regs 14, 19, as read with reg 20 in the case of seeds;

77 (3) in the case of forest reproductive material from a third country: (a) it has met the requirements as to entry to Great Britain set out in reg 25 (see PARA 111); and (b) after entry to Great Britain it meets the requirements of reg 17, and reg 14 (except reg 14(1)(f)) and reg 19, as read with reg 20 in the case of seeds; or

78 (4) it is marketed in compliance with reg 31.

As to the meanings of 'collection' and 'production' see PARA 100 note 4; as to the meaning of 'third country' see PARA 100 note 3; and as to the meaning of 'Great Britain' see PARA 2 note 2.

5 le the artificial hybrids listed in the Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, Sch 1: see PARA 100 note 5.

6 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 17(2). As to the categories 'selected', 'qualified' and 'tested' see PARA 100 text and notes 8-10.

7 As to the meaning of 'subsequent multiplication by vegetative propagation' see PARA 103 note 17.

8 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 17(3).

9 As to the meaning of 'basic material' see PARA 100 note 4.

10 As to the meaning of 'seed source' see PARA 100 note 4.

11 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 17(4). As to the category 'source-identified' see PARA 100 text and note 7.

- 12 As to the meaning of 'stand' see PARA 100 note 4.
- 13 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 17(5).
- 14 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 17(6)(a). As to the meaning of 'seed orchard' see PARA 100 note 4.
- 15 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 17(6)(b). As to the meaning of 'parent of family' see PARA 100 note 4.
- 16 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 17(6)(c). As to the meaning of 'clone' see PARA 100 note 4.
- 17 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 17(6)(d). As to the meaning of 'clonal mixture' see PARA 100 note 4.
- 18 As to the meaning of 'genetically modified organism' see PARA 101 note 20.
- 19 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 17(7).
- 20 le the species listed in the Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, Sch 1: see PARA 100 note 5.
- 21 le under the Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, regs 14, 15 (see PARA 105) and reg 19 (see PARA 108).
- 22 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 17(8).
- 23 As to the meaning of 'parts of plants' see PARA 100 note 4.
- 24 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 17(9).
- 25 As to the meaning of '*Populus* spp' see PARA 100 note 5.
- 26 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 17(10). The prescribed standards are those described in Sch 9 as follows (reg 17(10), Sch 9), ie:
 - 79 (1) stem cuttings:
 39. (a) stem cuttings are not to be considered to be of fair marketable quality if any of the following defects exist: (i) their wood is more than two years old; (ii) they have less than two well formed buds; (iii) they are affected by necroses or show damage by harmful organisms; (iv) they show signs of desiccation, overheating, mould or decay;
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 40. (b) minimum dimensions for stem cuttings: minimum length is 20 cm; and minimum top diameter is, for Class EC 1, 8 mm, and for Class EC 2, 10 mm;
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 - 80 (2) sets:
 41. (a) sets are not to be considered to be of fair marketable quality if any of the following defects exist: (i) their wood is more than three years old; (ii) they have less than five well formed buds; (iii) they are affected by necroses or show damage by harmful organisms; (iv) they show signs of desiccation, overheating, mould or decay; (v) they have injuries other than pruning cuts; (vi) they have multiple stems; (vii) they have excessive stem curvature;
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 42. (b) size classes for sets: with regard to Non-Mediterranean regions, the minimum diameter at mid-length is 6 mm for Class N1 and 15 mm for Class N2 and the minimum height is 1.5 m for Class N1 and 3 m for Class N2; and with regard to Mediterranean regions, the minimum diameter at mid-length is 25 mm for Class S1 and 30 mm for Class S2 and the minimum height is 3 m for Class S1 and 4 m for Class S2.
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- 27 As to the meaning of 'planting stock' see PARA 100 note 4.
- 28 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 17(11).

29 'Mediterranean climatic region' means Greece, Italy, Portugal, Spain and the following regions of France: Aquitaine, Languedoc-Roussillon, Midi-Pyrénées, Provence-Alpes-Côte d'Azur: Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 2(2).

30 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 17(12). The prescribed requirements are those set out in Sch 10, as follows (reg 17(12), Sch 10), ie:

- 81 (1) planting stock must not be marketed unless 95% of each lot is of fair marketable quality and the requirements and specifications of Sch 10 paras 1-3 (see heads (2)-(4) below) are met;
- 82 (2) planting stock must not be considered to be of fair marketable quality if any of the following defects exist:
- 43. (a) injuries other than pruning cuts or injuries due to damage when lifting;
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- 44. (b) lack of buds with the potential to form a leading shoot;
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- 45. (c) multiple stems;
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- 46. (d) deformed root system;
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- 47. (e) signs of desiccation, overheating, mould, decay or other harmful organisms;
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- 48. (f) the plants are not well balanced;
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- 83 (3) size of the plants: in relation to:
- 49. (a) *Pinus halepensis*, where the maximum age is one year, the minimum height is 8 cm, the maximum height is 25 cm and the minimum root collar diameter is 2 mm, and where the maximum age is two years, the minimum height is 12 cm, the maximum height is 40 cm and the minimum root collar diameter is 3 mm;
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- 50. (b) *Pinus leucodermis*, where the maximum age is one year, the minimum height is 8 cm, the maximum height is 25 cm and the minimum root collar diameter is 2 mm, and where the maximum age is two years, the minimum height is 10 cm, the maximum height is 35 cm and the minimum root collar diameter is 3 mm;
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- 51. (c) *Pinus nigra*, where the maximum age is one year, the minimum height is 8 cm, the maximum height is 15 cm and the minimum root collar diameter is 2 mm, and where the maximum age is two years, the minimum height is 10 cm, the maximum height is 20 cm and the minimum root collar diameter is 3 mm;
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- 52. (d) *Pinus pinaster*, where the maximum age is one year, the minimum height is 7 cm, the maximum height is 30 cm and the minimum root collar diameter is 2 mm, and where the maximum age is two years, the minimum height is 15 cm, the maximum height is 45 cm and the minimum root collar diameter is 3 mm;
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- 53. (e) *Pinus pinea*, where the maximum age is one year, the minimum height is 10 cm, the maximum height is 30 cm and the minimum root collar diameter is 3 mm, and where the maximum age is two years, the minimum height is 15 cm, the maximum height is 40 cm and the minimum root collar diameter is 4 mm;
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- 54. (f) *Quercus ilex*, where the maximum age is one year, the minimum height is 8 cm, the maximum height is 30 cm and the minimum root collar diameter is 2 mm, and where the maximum age is two years, the minimum height is 15 cm, the maximum height is 50 cm and the minimum root collar diameter is 3 mm;
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- 55. (g) *Quercus suber*, where the maximum age is one year, the minimum height is 13 cm, the maximum height is 60 cm and the minimum root collar diameter is 3 mm;

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- 84 (4) size of the container, where used: in the case of *Pinus pinaster*, the minimum volume of the container is 120 cubic cm and in the case of other species the minimum volume is 200 cubic cm.

31 As to the Forestry Commissioners see PARA 34 et seq.

32 'Registered supplier' means a supplier of forest reproductive material registered in accordance with the Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 16 (see PARA 106): reg 2(2).

33 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 18(1)(a). As to appeals against decisions under reg 18 see PARA 115.

34 As to the meaning of 'seed unit' PARA 100 note 4.

35 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 18(1)(b). See note 33.

36 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 18(2); and see note 33.

37 See the Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 30(1)(a), (b); and PARA 114.

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108. Labelling and packaging of lots for marketing; seed testing.

Forest reproductive material¹ in the separate, distinct lots required by statute² may be marketed³ only if the lot is accompanied by a supplier's label or document which documents the prescribed matters⁴. In the case of forest reproductive material marketed as a seed lot, the supplier's label or document must⁵, in addition to the information so required, also contain the following information, stating in each case the date on which any assessment which is the source of the information so provided was carried out:

- 389 (1) the respective percentage by weight of pure seed, other seed and inert matter⁶;
- 390 (2) the germination percentage of the pure seed, or, where germination percentage is impossible or impractical to assess, the viability percentage assessed by reference to a method which must be described⁷;
- 391 (3) the weight of 1,000 pure seeds⁸; and
- 392 (4) the number of germinable seeds per kilogram of the seed, or, where the number of germinable seeds is impossible or impractical to assess, the number of viable seeds per kilogram⁹.

The information required under heads (1) to (4) above must be obtained from assessments using testing techniques which:

- 393 (a) are, so far as is practical in all the circumstances, internationally accepted techniques¹⁰; and
- 394 (b) in the case of seeds to be tested in Great Britain¹¹, have been confirmed by the Forestry Commissioners¹² as internationally accepted techniques prior to the assessments taking place¹³.

When forest reproductive material in the form of seed of any given season's crop is first sold in that season as forest reproductive material, it need not meet the requirements of head (2) above if the testing required to ascertain that information has not been concluded, but must meet those requirements during all subsequent marketing where the supplier's label or document is needed¹⁴. The information requirements of heads (2) and (4) above do not, however, apply to forest reproductive material in the form of seed which is marketed in quantities no greater than those described in respect of the specified¹⁵ individual species and artificial hybrids¹⁶.

Seed units¹⁷ may be marketed only in sealed packages, the sealing device of which must be such that it becomes unusable once the sealed package has been opened¹⁸.

Any label or document, other than those which may be created pursuant to the provisions relating to identification and separation of forest reproductive material during production¹⁹ or pursuant to the above provisions²⁰, which accompanies any lot of forest reproductive material derived from basic material consisting of a genetically modified organism must clearly document that fact, whether the label is required by law or not²¹.

Where a supplier's labels or documents are printed or otherwise created using coloured labels, the colour of the supplier's label or document must be:

- 395 (i) yellow for forest reproductive material of the category 'source-identified'²²;
- 396 (ii) green for forest reproductive material of the category 'selected'²³;
- 397 (iii) pink for forest reproductive material of the category 'qualified'²⁴; and
- 398 (iv) blue for forest reproductive material of the category 'tested'²⁵.

1 As to the meaning of 'forest reproductive material' see PARA 100.

2 Ie required under the Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 14: see PARA 105.

3 Ie under the Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 17: see PARA 107. As to the meaning of 'marketed' see PARA 103 note 4.

4 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 19(1). The prescribed matters are: (1) the identification criteria and any other information required to be recorded under reg 14(2) and (3) (see PARA 105); (2) the master certificate number or numbers; (3) the name of the supplier; (4) the quantity supplied; (5) the words 'provisionally approved' in the case of forest reproductive material of the category 'tested' which has been approved under reg 7(2) (see PARA 101) or, in the case of forest reproductive material approved in Northern Ireland, another member state or a third country, under the equivalent procedure in that country; (6) whether the material has been vegetatively propagated; (7) in the case of forest reproductive material derived from basic material which consists of a genetically modified organism, the fact that it is so derived; and (8) in the case of parts of plants of *Populus* spp the EC classification described in Sch 9 paras 1(b) and 2(b) (see PARA 107 note 26); (9) in the case of material derived from basic material of *Pinus pinaster* Ait which does not (and by virtue of reg 4(1A) (see PARA 100) does not need to) meet the requirement in Sch 4 para (1)(c) (see PARA 100 note 9), compliance with EC Commission Regulation 69/2004 (OJ L10, 16.1.2004, p 16) authorising derogations from certain provisions of EC Council Directive 1999/105 (OJ L11, 15.1.2000, p 17) in respect of the marketing of forest reproductive material derived from certain basic material by stating that 'the material meets the requirements as foreseen by EC Commission Regulation 69/2004': Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 19(1)(a)-(i) (amended by SI 2006/2530). As to master certificates see PARA 104. As to the meanings of 'member state' and 'third country' see PARA 100 note 3. As to the meanings of 'basic material' and 'parts of plants' see PARA 100 note 4. As to the meaning of 'genetically modified organism' see PARA 101 note 20. As to the meaning of '*Populus* spp' see PARA 100 note 5. Except in the Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, regs 23, 24 (see PARA 110), 'supplier's label or document' means the label or document setting out the particulars so required: reg 2(2).

5 Ie subject to the Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 19(3), (4): see the text and notes 14-16.

6 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 19(2)(a). It is an offence to falsify test results of assessments carried out for the purposes of reg 19(2), or otherwise to interfere with the testing process so that the information provided is false: see reg 30(1)(f); and PARA 114.

7 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 19(2)(b). See note 6.

8 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 19(2)(c). See note 6.

9 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 19(2)(d). See note 6.

10 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 20(a) (reg 20 substituted by SI 2006/2530). As to appeals against decisions by the Commissioners under the Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 20 see PARA 115.

11 As to the meaning of 'Great Britain' see PARA 2 note 2.

12 As to the Forestry Commissioners see PARA 34 et seq.

13 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 20(b) (as substituted: see note 10).

14 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 19(3).

15 le listed in the Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, Sch 11: see note 16.

16 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 19(4). Those quantities are as follows (reg 19(4), Sch 11), ie:

- 85 (1) conifers; in respect of: *Abies alba* Mill, 1,200 g; *Abies cephalonica* Loud, 1,800 g; *Abies grandis* Lindl, 500 g; *Abies pinsapo* Boiss, 1,600 g; *Cedrus atlantica* Carr, 2,000 g; *Cedrus libani* A Richard, 2,000 g; *Larix decidua* Mill, 170 g; *Larix x eurolepis* Henry, 160 g; *Larix kaempferi* Carr, 100 g; *Larix sibirica* Ledeb, 100 g; *Picea abies* Karst, 200 g; *Picea sitchensis* Carr, 60 g; *Pinus brutia* Ten, 500 g; *Pinus canariensis* C Smith, 300 g; *Pinus cembra* Linne, 7,000 g; *Pinus contorta* Loud, 90 g; *Pinus halepensis* Mill, 500 g; *Pinus leudodermis* Antoine, 600 g; *Pinus nigra* Arnold, 500 g; *Pinus pinaster* Ait, 1,200 g; *Pinus pinea* L, 10,000 g; *Pinus radiata* D Don, 800 g; *Pinus sylvestris* L 200 g; *Pseudotsuga menziesii* Franco, 300 g;
- 86 (2) broad-leaved species; in respect of: *Acer platanoides* L, 3,500 g; *Acer pseudoplatanus* L, 3,000 g; *Alnus glutinosa* Gaertn, 40 g; *Alnus incana* Moench, 20 g; *Betula pendula* Roth, 50 g; *Betula pubescens* Ehrh, 50 g; *Carpinus betulus* L, 2,500 g; *Castanea sativa* Mill, 45,000 g; *Fagus sylvatica* L, 6,000 g; *Fraxinus angustifolia* Vahl, 2,000 g; *Fraxinus excelsior* L, 2,000 g; *Populus* spp, 20 g; *Prunus avium* L, 4,500 g; *Quercus* spp L, 40,000 g; *Robinia pseudoacacia* L, 500 g; *Tilia cordata* Mill, 900 g; *Tilia platyphyllos* Scop, 2,500 g.

17 As to the meaning of 'seed unit' PARA 100 note 4.

18 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 19(5).

19 le pursuant to the Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 14(1): see PARA 105.

20 le pursuant to the Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 19: see the text and notes 1-9, 11-19, 21-25.

21 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 19(6).

22 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 19(7)(a). As to the category 'source-identified' see PARA 100 text and note 7.

23 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 19(7)(b). As to the category 'selected' see PARA 100 text and note 8.

24 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 19(7)(c). As to the category 'qualified' see PARA 100 text and note 9.

25 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 19(7)(d). As to the category 'tested' see PARA 100 text and note 10.

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E. MOVEMENT OF FOREST REPRODUCTIVE MATERIAL BETWEEN GREAT BRITAIN AND ELSEWHERE IN THE EUROPEAN COMMUNITY

109. Dispatch of forest reproductive material to Northern Ireland or other member states.

No person other than a registered supplier¹ may dispatch forest reproductive material² to a destination in Northern Ireland³; and no registered supplier may dispatch forest reproductive material to a destination in Northern Ireland unless that material complies with the prescribed requirements⁴ as if the forest reproductive material were to be marketed⁵ within Great Britain⁶, and it is accompanied by a supplier's label or document⁷.

No person other than a registered supplier may dispatch forest reproductive material to a destination in another member state⁸; and no registered supplier may dispatch forest reproductive material to a destination in another member state unless that material complies with the prescribed requirements⁹ as if the forest reproductive material were to be marketed within Great Britain, and it is accompanied by a supplier's label or document¹⁰. A registered supplier who dispatches forest reproductive material to a destination in another member state must inform the Forestry Commissioners¹¹ in writing no later than 14 days from the date on which the material has left Great Britain providing the following information:

- 399 (1) the master certificate number¹²;
- 400 (2) date of dispatch or intended date of dispatch of the forest reproductive material¹³;
- 401 (3) addresses to and from which the forest reproductive material has been or is to be dispatched¹⁴;
- 402 (4) the botanical name, and, if different from that stated in the master certificate, the nature and quantity of the forest reproductive material¹⁵;
- 403 (5) the supplier's label or document number¹⁶; and
- 404 (6) where applicable, the length of time in nursery¹⁷.

Contravention of these provisions is an offence¹⁸.

1 As to the meaning of 'registered supplier' see PARA 107 note 32.

2 As to the meaning of 'forest reproductive material' see PARA 100.

3 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 21(1).

4 I.e. the requirements of the Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 17: see PARA 107.

5 As to the meaning of 'marketed' see PARA 103 note 4.

6 As to the meaning of 'Great Britain' see PARA 2 note 2.

7 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 21(2). As to the meaning of 'supplier's label or document' see PARA 108 note 4.

- 8 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 22(1). As to the meaning of 'member state' see PARA 100 note 3.
- 9 See note 4.
- 10 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 22(2).
- 11 As to the Forestry Commissioners see PARA 34 et seq.
- 12 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 22(3)(a). As to master certificates see PARA 104.
- 13 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 22(3)(b).
- 14 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 22(3)(c) (substituted by 2006/2530).
- 15 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 22(3)(d).
- 16 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 22(3)(e).
- 17 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 22(3)(f).
- 18 See the Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 30(1); and PARA 114.

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110. Movement of forest reproductive material into Great Britain from Northern Ireland and imports into Great Britain from a member state.

No person acting in the course of a business or trade, whether or not for profit:

405 (1) may take delivery of forest reproductive material¹ intending to market² it if the material has been dispatched to him from Northern Ireland unless it is accompanied by the required³ supplier's label or document⁴; or

406 (2) may import from a member state⁵ forest reproductive material into Great Britain⁶ intending to market that material unless it is accompanied by the required⁷ supplier's label or document⁸.

Contravention of these provisions is an offence⁹.

1 As to the meaning of 'forest reproductive material' see PARA 100.

2 As to the meaning of 'market' see PARA 103 note 4.

3 Ie required by EC Council Directive 1999/105 (OJ L11, 15.1.2000, p 17) art 14.

4 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 23. As to the meaning of 'supplier's label or document' see PARA 108 note 4.

5 As to the meaning of 'member state' see PARA 100 note 3.

6 As to the meaning of 'Great Britain' see PARA 2 note 2.

7 See note 3.

8 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 24.

9 See the Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 30(1)(a); and PARA 114.

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111. Prohibition against imports of forest reproductive material from third countries.

No person acting in the course of a business or trade, whether or not for profit, may import into Great Britain¹ from a third country² forest reproductive material³ which he intends to market⁴ unless:

- 407 (1) the forest reproductive material was produced in a specified third country⁵, is of a specified species⁶ and is of a category⁷, and derived from a type of basic material⁸, specified⁹ in relation to that species¹⁰;
- 408 (2) at least three days before the intended date of import of the forest reproductive material, he provides to the Forestry Commissioners¹¹ notice in writing that complies with the requirements of heads (a) to (c) below¹²; and
- 409 (3) the forest reproductive material is accompanied upon entry into Great Britain by an official certificate¹³.

The notice required by head (2) above must:

- 410 (a) specify the anticipated place of entry into Great Britain of the forest reproductive material¹⁴;
 - 411 (b) specify the anticipated date and time of arrival of the forest reproductive material into Great Britain¹⁵; and
 - 412 (c) be accompanied by a copy of the official certificate issued in respect of the forest reproductive material or, if no certificate has been issued, contain the following information:
- 49 77. (i) the botanical name of the forest reproductive material¹⁶;
 - 78. (ii) the country and region of provenance¹⁷ of the forest reproductive material¹⁸;
 - 79. (iii) the name and address of the exporter¹⁹;
 - 80. (iv) the category and nature of the forest reproductive material and the type of basic material from which it is derived²⁰; and
 - 81. (v) the quantity of the forest reproductive material²¹.
 - 50

Contravention of these provisions is an offence²².

1 As to the meaning of 'Great Britain' see PARA 2 note 2.

2 As to the meaning of 'third country' see PARA 100 note 3.

3 As to the meaning of 'forest reproductive material' see PARA 100.

4 As to the meaning of 'market' see PARA 103 note 4.

5 le a third country listed in the Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, Sch 13 col 1 (Sch 13 added by SI 2006/2530).

6 le a species listed in the Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, Sch 13 col 2 (as added: see note 5) opposite the reference to that country.

7 As to the meaning of 'category' see PARA 101 note 31.

8 As to the meaning of 'basic material' see PARA 100 note 4.

9 le specified in the Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, Sch 13 cols 3, 4 (as added: see note 5) respectively.

10 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 25(1)(a) (reg 25 substituted by SI 2005/2530).

11 As to the Forestry Commissioners see PARA 34 et seq.

12 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 25(1)(b) (as substituted: see note 10).

13 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 25(1)(c) (as substituted: see note 10). As to the meaning of 'official certificate' see PARA 104 note 8. The Commissioners must accept as an official certificate an official statement or other document, issued by the official body of the third country in which is located the basic material from which forest reproductive material is collected or otherwise derived, if they are satisfied that the official statement or other document: (1) contains equivalent information to that required to complete the document set out in the Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, Sch 6, 7 or 8, as appropriate; and (2) meets equivalent requirements to those specified in reg 13(9), (10) (see PARA 104): reg 25(3) (as so substituted). As to the meaning of 'official body' see PARA 100 note 7.

14 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 25(2)(a) (as substituted: see note 10).

15 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 25(2)(b) (as substituted: see note 10).

16 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 25(2)(c)(i) (as substituted: see note 10).

17 As to the meaning of 'region of provenance' see PARA 100 note 7.

18 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 25(2)(c)(ii) (as substituted: see note 10).

19 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 25(2)(c)(iii) (as substituted: see note 10).

20 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 25(2)(c)(iv) (as substituted: see note 10).

21 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 25(2)(c)(v) (as substituted: see note 10).

22 See the Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 30(1)(a); and PARA 114.

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F. COMPLIANCE AND APPEALS

112. Keeping and production of documents.

Any applicant¹ who seeks or obtains approval of basic material² must³, for a period of five years from the date of his application, retain copies of any such relevant documentation⁴ as he has obtained or created pursuant to his application, and in particular, in respect of basic material intended for the production⁵ of forest reproductive material⁶ to be certified as 'tested'⁷, must keep and retain records which describe test sites, including location, climate, soil, past use, establishment, management and any damage due to abiotic or biotic factors⁸. An applicant who is unsuccessful in obtaining approval of basic material ceases, however, to be subject to those obligations after his time has expired for appealing⁹ against a decision of the Forestry Commissioners¹⁰ not to approve the basic material the subject of the application, or, in the case where he lodges an appeal against such a decision, on the expiry of his time for further appeal after receiving notification of a decision of the tribunal¹¹ or other relevant appeal body rejecting his appeal¹².

Any registered supplier¹³ and any other person who undertakes the collecting¹⁴ or production, storage, processing, or transportation of forest reproductive material ('relevant activities') must:

- 413 (1) retain or cause to be retained such of the following documents as he has obtained or created pursuant to the statutory requirements¹⁵ or, where in accordance with those provisions the original is no longer retained, a copy thereof:
- 51
82. (a) notification¹⁶ of the proposed collection of forest reproductive material and any written authorisation or evidence of the collector's authority to collect that forest reproductive material¹⁷;
83. (b) master certificate¹⁸;
84. (c) evidence of any assessment undertaken for the purpose of labelling and packaging of forest reproductive material marketed as a seed lot¹⁹, including the date on which the assessment was made²⁰;
85. (d) supplier's label or document²¹;
86. (e) licence granted²² for the marketing of certain material²³;
87. (f) communication required²⁴ where forest reproductive material is moved to another member state²⁵;
88. (g) plant passports²⁶ and phytosanitary certificates²⁷;
89. (h) notification²⁸ of intended import of forest reproductive material from a third country²⁹; and
- 52
- 414 (2) retain or cause to be retained, if so required by a notice in writing served on him by the Commissioners, such other records relating to relevant activities, or to activities undertaken as a registered supplier, in such form, as may be specified in that notice³⁰.

All such documents and other records required to be retained by a registered supplier or other person:

- 415 (i) pursuant to head (1) must be so retained for a period of five years from the date of the document³¹; and
- 416 (ii) pursuant to head (2) above must be so retained for the period of time specified in the notice served pursuant to that provision³².

Any applicant³³, any registered supplier and any other person who undertakes relevant activities must, on the request of an authorised officer³⁴, produce to that officer or another person nominated by that officer, and allow the officer or other person to make copies of:

- 417 (A) records and documents kept or retained³⁵ by him or on his behalf pursuant to the relevant provisions set out above³⁶; and
- 418 (B) any other books, plans, maps, photographs, records or other documents, including those held in electronic form ('electronic material'), in his possession or control which relate to his application³⁷ or to the relevant activities or his activities as a registered supplier, as appropriate³⁸.

Any applicant, registered supplier or other person so required to produce electronic material must give the authorised officer or other person referred to in the above provision access to the computer processor or disk or any other electronic storage on which the electronic material is held, and must provide the authorised officer or other person nominated by him with reasonable facilities for the inspection and copying of such electronic material³⁹.

Failure to comply with these provisions is an offence, as is the obstruction or impeding of an authorised officer or any person nominated by him in the exercise of his powers under these provisions⁴⁰.

1 Ie any applicant under the Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 7(7): see PARA 101.

2 As to the meaning of 'basic material' see PARA 100 note 4.

3 Ie subject to the Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 26(2): see the text and notes 9-12.

4 Ie any documentation referred to in the Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, Schs 2-5: see PARA 100 notes 7-10.

5 As to the meaning of 'production' see PARA 100 note 4.

6 As to the meaning of 'forest reproductive material' see PARA 100.

7 As to the category 'tested' see PARA 100 text and note 10.

8 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 26(1).

9 As to appeals see PARA 115.

10 As to the Forestry Commissioners see PARA 34 et seq.

11 'Tribunal' means the tribunal constituted under the Plant Varieties Act 1997 s 42, Sch 3 (ie the Plant Varieties and Seeds Tribunal) (see **AGRICULTURAL PRODUCTION AND MARKETING** vol 1 (2008) PARA 1221 et seq); Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 2(2).

12 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 26(2).

13 As to the meaning of 'registered supplier' see PARA 107 note 32.

14 As to the meaning of 'collecting' see PARA 100 note 4.

- 15 le pursuant to the requirements of the Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026: see PARAS 100 et seq, 113 et seq.
- 16 le under the Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 11: see PARA 103.
- 17 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 26(3)(a)(i).
- 18 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 26(3)(a)(ii). As to master certificates see reg 13; and PARA 104.
- 19 le for the purpose of the Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 19(2): see PARA 108.
- 20 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 26(3)(a)(iii).
- 21 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 26(3)(a)(iv). As to the meaning of 'supplier's label or document' see PARA 108 note 4.
- 22 le under the Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 18: see PARA 107.
- 23 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 26(3)(a)(v).
- 24 le under the Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 22: see PARA 109.
- 25 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 26(3)(a)(vi). As to the meaning of 'member state' see PARA 100 note 3.
- 26 As to the meaning of 'plant passport' see PARA 65 note 13 (definition applied by the Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 2(2)).
- 27 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 26(3)(a)(vii) (reg 26(3)(a)(vii) substituted, reg 26(3)(a)(viii) added, by SI 2006/2530). As to the meaning of 'phytosanitary certificate' see PARA 63 note 13 (definition applied by the Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 2(2)).
- 28 le under the Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 25: see PARA 111.
- 29 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 26(3)(a)(viii) (as added: see note 27).
- 30 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 26(3)(b). A registered supplier or other person required pursuant to reg 26(3)(b) to retain specified records must furnish to the Commissioners at their request such information relating to those records as they may reasonably require: reg 26(5).
- 31 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 26(4)(a).
- 32 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 26(4)(b).
- 33 le any applicant referred to in the Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 26(1) (as read with reg 26(2)): see the text and notes 1-12.
- 34 As to the meaning of 'authorised officer' see PARA 100 note 7.
- 35 le pursuant to the Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 26(1) or reg 26(3): see the text and notes 1-8, 13-30.
- 36 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 26(6)(a).
- 37 le his application under Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 7(7): see PARA 101.
- 38 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 26(6)(b).

39 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 26(7).

40 See the Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 30(1)(c), (d);
and PARA 114.

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113. Inspection and taking of samples.

An authorised officer¹ may², for the specified purposes (which include taking samples)³ and at all reasonable hours, enter and inspect any premises⁴ and must, if requested, produce documentary evidence of his authorisation by the Forestry Commissioners⁵ so to enter and inspect⁶. An authorised officer entering and inspecting premises in exercise of his powers under this provision may take with him such other persons, including representatives of the EC Commission, and such equipment or vehicles as he considers necessary for the purposes of entering and inspecting the premises, or for facilitating the required⁷ checks⁸. Any persons who have so accompanied an authorised officer in entering and inspecting premises may⁹, whether or not accompanied by the authorised officer and on production if so requested of documentary evidence of their authorisation from the EC Commission or an authorised officer, remain on and from time to time re-enter the premises with such equipment or vehicles as the authorised officer considers necessary¹⁰. The obstruction or impeding of an authorised officer under the above powers is an offence¹¹.

A sample of seed taken by an authorised officer must be divided by him into three parts, each of which he must seal, and one part must be delivered or sent by him to the owner¹² of the seed or a representative nominated by the owner, one part must be delivered or sent to a third party for independent testing, and the remaining part must be retained by the authorised officer and be available for production to a court¹³ provided that where it appears to the person taking the sample that the seed from which the sample has been taken was purchased for use and not for re-sale, the first part of the sample must be delivered or sent to the last seller of the seed or to his representative in place of the owner of the seed or to his representative¹⁴. An authorised officer taking a sample of seeds pursuant to this provision must issue to the owner of the seeds a certificate in the prescribed form¹⁵.

1 As to the meaning of 'authorised officer' see PARA 100 note 7.

2 Ie subject to the Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 27(5): see note 4.

3 Ie the purposes set out in the Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 27(4): reg 27(1). The purposes for which an authorised officer may enter and inspect premises in accordance with reg 27(1) are as follows: (1) to check that the requirements of regs 16(1), 17, 21-25 (see PARAS 106-107, 109-111) and reg 31 (transitional arrangements for forest reproductive material existing at 1 January 2003) have been and are being met; (2) to observe and monitor practices as to production, and in particular as to separation, identification, propagation, mixing, production and labelling of forest reproductive material intended for marketing; (3) to check that the conditions on which any licence granted under reg 18 (see PARA 107) have been and are being complied with; (4) to observe testing premises, practices and techniques which are used or which it is proposed be used for the assessment of seeds for purposes of regs 19(2), 20 (see PARA 108); (5) to examine records or other documents including those held in electronic form pursuant to reg 26 (see PARA 112); (6) to examine any forest reproductive material or basic material on those premises and to take samples of such forest reproductive material and basic material as the authorised officer considers necessary; and (7) to take such photographs of the premises or any material or other objects found there or of any activity carried on at the premises in connection with marketing of forest reproductive material or any relevant activity as the authorised officer considers necessary: reg 27(4).

4 Ie within the meaning of the Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 27(5). For these purposes, 'premises': (1) means premises which the authorised officer exercising the powers granted him under reg 27 reasonably believes are used for collection, production, storage, trade, transportation, importation or marketing of forest reproductive material; (2) excludes premises used wholly or mainly for domestic purposes; and (3) includes any vehicle or vessel: reg 27(5).

- 5 As to the Forestry Commissioners see PARA 34 et seq.
- 6 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 27(1).
- 7 le required under EC Council Directive 1999/105 (OJ L11, 15.1.2000, p 17) art 16(6).
- 8 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 27(2).
- 9 le for the purposes of the Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 27(2), (4): see the text and notes 7-8; and also note 3.
- 10 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 27(3).
- 11 See the Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 30(1)(d); and PARA 114.
- 12 As to the meaning of 'owner' see PARA 101 note 25.
- 13 le in accordance with the Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 29: see PARA 114.
- 14 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 28(1).
- 15 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 28(2). For the prescribed form of certificate see Sch 12.

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114. Offences and penalties; use of samples in criminal proceedings.

A person is guilty of an offence¹ if without reasonable excuse, proof of which lies with him, he:

- 419 (1) contravenes the specified statutory provisions²;
- 420 (2) breaches any condition on which a licence has been granted³ to him⁴;
- 421 (3) fails to produce records or other documents when required to do so⁵ or to provide⁶ access and reasonable facilities for the inspection or copying of electronic material⁷;
- 422 (4) obstructs or impedes an authorised officer⁸, or any person nominated⁹ by an authorised officer, in the exercise of powers¹⁰ relating to the keeping and production of documents and powers¹¹ relating to the inspection of premises and taking of samples¹²;
- 423 (5) provides or permits to be provided false information in any document required under the statutory provisions¹³; or
- 424 (6) falsifies test results of assessments carried out for the purpose of providing the information required for the labelling and packaging of forest reproductive material marketed as a seed lot¹⁴ or otherwise interferes with the testing process so that the information provided¹⁵ is false¹⁶.

Proceedings for such an offence may¹⁷ be commenced within the period of six months from the date on which evidence sufficient in the opinion of the prosecutor to warrant the proceedings came to his knowledge¹⁸; but no such proceeding may be commenced by virtue of this provision more than three years after the commission of the offence¹⁹.

Evidence may not be adduced in proceedings for an offence respecting a sample of seeds taken by an authorised officer unless the sample was dealt with in the prescribed manner²⁰ and the following provisions have been and are observed²¹. A certificate in the prescribed form²² purporting to be issued by an authorised officer and stating that a sample was dealt with in a particular manner is sufficient evidence of the facts stated in the certificate²³. If part of a sample taken by an authorised officer is sent to a third party for independent testing, it must be so sent as soon as practicable after the sample is taken, and the person to whom any other part of the sample is given must be informed before the part to be sent to the third party is sent²⁴. A copy of a test result issued by an independent third party in documentary form in respect of a test of part of a sample taken by an authorised officer must be sent to the person to whom any other part of the sample was or is being sent²⁵. In any proceedings for an offence in respect of which evidence obtained pursuant to these provisions and the provisions relating to treatment of seed samples²⁶ is to be relied on by the prosecutors of the offence, a copy of a test result issued by an independent third party in documentary form must accompany the summons or complaint²⁷.

Where proceedings are brought for an offence:

- 425 (a) under head (5) above in respect of providing false information about seed assessments undertaken²⁸ for the purposes of labelling and packaging of forest reproductive material marketed as a seed lot²⁹; or
- 426 (b) under head (6) above³⁰,

if any sample of the seeds has been taken by an authorised officer, the third part of that sample required³¹ to be kept by the authorised officer must be produced at the hearing, and the court may, if it thinks fit, upon the request of a party to the proceedings, cause the part so produced to be sent to an independent third party for testing³².

1 A person guilty of an offence under heads (1) to (6) in the text is liable on summary conviction to a fine not exceeding level 5 on the standard scale: Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 30(3). As to the standard scale see PARA 32 note 6.

2 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 30(1)(a). The 'specified statutory provisions' for these purposes are reg 8(2) (see PARA 101), reg 9(2),(3), (9)(a) (see PARA 102), reg 16(1) (see PARA 106), reg 17 (see PARA 107) and regs 21-25 (see PARAS 109-111).

3 Ie under the Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 18: see PARA 107.

4 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 30(1)(b).

5 Ie under the Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 26: see PARA 112.

6 See note 5.

7 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 30(1)(c).

8 As to the meaning of 'authorised officer' see PARA 100 note 7.

9 Ie under the Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 26(6): see PARA 112.

10 Ie the powers set out in the Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 26: see PARA 112.

11 Ie the powers set out in the Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 27: see PARA 113.

12 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 30(1)(d).

13 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 30(1)(e). The 'statutory provisions' are the Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026: see PARAS 100 et seq, 115 et seq.

14 Ie required under the Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 19(2) as read with reg 20: see PARA 108.

15 Ie provided pursuant to the Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 19(2) as read with reg 20: see PARA 108

16 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 30(1)(f).

17 Ie subject to the Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 30(2A): see the text and note 19.

18 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 30(2) (reg 30(2) substituted, and reg 30(2A), (2B) added, by SI 2006/2530). For these purposes a certificate signed by or on behalf of the prosecutor and stating the date on which evidence sufficient in his opinion to warrant the proceedings came to his knowledge is conclusive evidence of that fact and a certificate stating that matter purporting to be so signed is to be deemed to be so signed unless the contrary is proved: Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 30(2B) (as so added).

19 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 30(2A) (as added: see note 18).

- 20 le the manner prescribed in the Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 28: see PARA 113.
- 21 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 29(1).
- 22 le in the form prescribed by the Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 28(2): see PARA 113.
- 23 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 29(2).
- 24 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 29(3).
- 25 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 29(4).
- 26 le pursuant to the Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 28: see PARA 113.
- 27 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 29(5).
- 28 le pursuant to the Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 19(2) as read with reg 20: see PARA 108.
- 29 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 29(6)(a).
- 30 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 29(6)(b).
- 31 le required by the Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 28(1): see PARA 113.
- 32 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 29(6). If, in a case where an appeal is brought, no action has been taken under reg 29(6), the provisions of reg 29(6) apply also to the court by which the appeal is heard: reg 29(7).

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115. Appeals from decisions of the Forestry Commissioners.

An appeal lies to the tribunal¹ from any decision of the Forestry Commissioners² made under the relevant statutory provisions³:

- 427 (1) a decision⁴ not to approve basic material⁵;
- 428 (2) a decision⁶ to approve basic material in the form of clones or clonal mixtures⁷ subject to qualifications as to duration of approval or level of production⁸;
- 429 (3) a decision⁹ to withdraw or amend approval of basic material¹⁰;
- 430 (4) a decision¹¹ not to issue a master certificate¹²;
- 431 (5) a decision¹³ not to enter a person's name in the Register of Suppliers¹⁴;
- 432 (6) a decision¹⁵ to remove a supplier's¹⁶ name from the Register of Suppliers or impose conditions upon his continued registration¹⁷;
- 433 (7) a decision¹⁸ not to grant a licence to market¹⁹ forest reproductive material²⁰;
- 434 (8) a decision²¹ that testing techniques used to obtain assessments necessary to provide the information required for the purposes of labelling and packaging of forest reproductive material marketed as a seed lot²² are not, to the Commissioners' satisfaction, internationally accepted techniques²³;
- 435 (9) a decision²⁴ not to approve verification test²⁵ methodology²⁶;
- 436 (10) a decision²⁷ not to approve a statistical design²⁸; and
- 437 (11) a decision²⁹ not to approve a statistical methodology as being one that is internationally recognised³⁰.

Where an appeal is so brought, the operation of a decision described in heads (1) to (11) above is to be suspended pending the final determination of the appeal, including determination of any subsequent appeals, and the Commissioners must take such steps as may be necessary to give effect to any decision given on the final determination of an appeal³¹.

1 As to the 'tribunal' see PARA 112 note 11. References in the Plant Varieties Act 1997 s 45(1), Sch 3 (see **AGRICULTURAL PRODUCTION AND MARKETING** vol 1 (2008) PARA 1221 et seq) to the statutory jurisdiction of the tribunal are to be construed for the purposes of an appeal brought under the Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 32 (see the text and notes 2-31) as if including the tribunal's jurisdiction under those Regulations: reg 32(2).

2 As to the Forestry Commissioners see PARA 34 et seq.

3 Ie under the provisions of the Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, referred to below.

4 Ie under the Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 7(1)-(3): see PARA 101. As to the meaning of 'basic material' see PARA 100 note 4.

5 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 32(1)(a).

6 Ie under the Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 7(1): see PARA 101. As to the meaning of 'production' see PARA 100 note 4.

7 As to the meanings of 'clone' and 'clonal mixture' see PARA 100 note 4.

8 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 32(1)(b).

- 9 Ie under the Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 9 (except for reg 9(8) and (9)): see PARA 102.
- 10 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 32(1)(c).
- 11 Ie under the Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 13(7): see PARA 104. As to the meaning of 'master certificate' see PARA 104 note 8.
- 12 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 32(1)(d).
- 13 Ie under the Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 16(3): see PARA 106.
- 14 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 32(1)(e).
- 15 Ie under the Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 16(4): see PARA 106.
- 16 As to the meaning of 'supplier' see PARA 106.
- 17 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 32(1)(f).
- 18 Ie under the Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 18: see PARA 107.
- 19 As to the meaning of 'market' see PARA 103 note 4.
- 20 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 32(1)(g). As to the meaning of 'forest reproductive material' see PARA 100.
- 21 Ie under the Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 20: see PARA 108.
- 22 Ie as required under the Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 19(2): see PARA 108.
- 23 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 32(1)(h).
- 24 Ie under the requirements of the Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, Sch 4 paras (1)(d), 2(d): see PARA 100 note 9.
- 25 'Verification test' means an assessment, whether by observation or measurement of characteristics, including molecular methods of measurement, or by other means, of the proportion of hybrid material in reproductive material, where that reproductive material is produced as an artificial hybrid: Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 2(2).
- 26 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 32(1)(i)(i).
- 27 Ie under the requirements of the Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, Sch 5 para (1)(d)(ii): see PARA 100 note 10.
- 28 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 32(1)(i)(ii).
- 29 Ie under the requirements of the Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, Sch 5 para (1)(e)(i): see PARA 100 note 10.
- 30 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 32(1)(i)(iii).
- 31 Forest Reproductive Material (Great Britain) Regulations 2002, SI 2002/3026, reg 32(3).

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(3) FORESTRY DEDICATION COVENANTS

116. Meaning of 'forestry dedication covenant'.

A forestry dedication covenant is a covenant entered into with the Forestry Commissioners¹ to the effect that the land may not, except with their previous written consent or, in the case of a dispute, under the direction of the Secretary of State or the Welsh Ministers², be used otherwise than for the growing of timber and other forest products in accordance with the rules and practice of good forestry or connected purposes³. A forestry dedication covenant is deemed to be made by the covenantor on behalf of himself, his successors and persons deriving title under him or them⁴, and a covenant expressing any contrary intention cannot be a forestry dedication covenant⁵.

The Forestry Act 1967 contemplates that a plan of operations may be drawn up and approved by the Forestry Commissioners⁶. There is no statutory requirement for the contents of such a plan. Where, however, a plan has been approved, limits are placed upon the power of compulsory acquisition of that land⁷ and there are special provisions for the granting of tree felling licences⁸.

1 As to the Forestry Commissioners see PARA 34 et seq.

2 As to the Secretary of State and the Welsh Ministers see PARA 2; and with particular reference to the Forestry Act 1967 see PARA 38 note 11.

3 Forestry Act 1967 ss 5(1), 49(1) (s 5(1) amended by SI 1999/1747). 'Forestry dedication covenant' means a covenant to the effect set out in the text entered into with the Commissioners in respect of land in England or Wales without an intention being expressed contrary to the application of the Law of Property Act 1925 s 79 (under which covenants relating to land are, unless the contrary is expressed, deemed to be made on behalf of the covenantor, his successors in title and persons deriving title under him or them: see **EQUITY** vol 16(2) (Reissue) PARA 618): Forestry Act 1967 s 5(1)(a).

4 This follows from the application of the Law of Property Act 1925 s 79: see **DEEDS AND OTHER INSTRUMENTS** vol 13 (2007 Reissue) PARA 256.

5 See note 3.

6 See the Forestry Act 1967 s 40(3); and PARA 118; ss 12(2), 14; and PARAS 128-129.

7 See the Forestry Act 1967 s 40(3); and PARA 118.

8 See the Forestry Act 1967 ss 12(2), 14; and PARAS 128-129.

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117. Enforcement of covenants.

In enforcing a forestry dedication covenant¹ against persons other than the covenantor, the Forestry Commissioners² have the same rights as if they had at all material times been the absolute owners in possession of ascertained land adjacent to the land in respect of which the covenant is sought to be enforced, and capable of being benefited by the covenant, and the covenant had been expressed to be for the benefit of that adjacent land³. The provisions of the Law of Property Act 1925⁴ giving power to discharge or modify restrictive covenants do not apply to a forestry dedication covenant⁵.

1 As to forestry dedication covenants see PARA 116.

2 As to the Forestry Commissioners see PARA 34 et seq.

3 Forestry Act 1967 s 5(2)(a). Prima facie, restrictive covenants are only enforceable against the successors in title of a covenantor if the covenantee is the owner of neighbouring land capable of being benefited (see **EQUITY** vol 16(2) (Reissue) PARA 621) and, but for this provision, the Commissioners could not enforce the covenant against the covenantor's successors.

It will be observed that the Commissioners are given 'the like rights' (see s 5(2)(a)) as if they were owners of adjacent land. An owner of adjacent land cannot enforce a covenant against a purchaser for value from the covenantor unless the covenant is registered as a Class D land charge, in the case of unregistered land: see the Land Charges Act 1972 ss 2(1), (5)(ii), 4(6); and **LAND CHARGES** vol 26 (2004 Reissue) PARAS 633, 635, 643. In the case of registered land, the covenant should be registered by way of a notice under the Land Registration Act 2002: see **LAND REGISTRATION** vol 26 (2004 Reissue) PARA 995 et seq. Moreover, even though the covenant is registered, the owner of adjacent land can enforce it against a purchaser from the covenantor only if it is negative in substance; equity will not enforce a positive covenant, but in a suitable case it may sever the covenant and enforce so much of it as is negative: see **EQUITY** vol 16(2) (Reissue) PARA 615.

4 See the Law of Property Act 1925 s 84; and **EQUITY** vol 16(2) (Reissue) PARA 630 et seq.

5 Forestry Act 1967 s 5(2)(b) (amended by SI 2009/1307).

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118. Provisions as to land under covenant.

The power of compulsory acquisition conferred on the Secretary of State and the Welsh Ministers¹ does not apply to land in respect of which a forestry dedication covenant² is in force and which is being used and managed in accordance with the provisions and conditions of a plan of operations³ approved by the Forestry Commissioners⁴.

A tree preservation order⁵ may be made in respect of land which is the subject of a forestry dedication covenant but it will not have effect in respect of anything done in accordance with a relevant plan⁶ which is for the time being in force⁷. The felling of trees on such land is subject to special provisions⁸.

1 See PARA 45. As to the Secretary of State and the Welsh Ministers see PARA 2.

2 As to forestry dedication covenants see PARA 116.

3 See PARA 116.

4 Forestry Act 1967 s 40(3). As to the Forestry Commissioners see PARA 34 et seq. Any question arising as to whether there has been a breach of any of the provisions and conditions of a plan of operations must be referred to an arbitrator appointed by the President of the Royal Institution of Chartered Surveyors (s 40(3)(a) (i)), but a breach capable of remedy is not to be treated as a breach unless there has been default in remedying it within a reasonable time of notice given by the Commissioners requiring it to be remedied (s 40(3)(b)).

Where land is compulsorily acquired, any afforestation grant paid in respect of that land is deducted from the compensation: see PARA 49.

5 As to tree preservation orders see PARA 61.

6 As to a 'relevant plan' for these purposes see the Town and Country Planning Act 1990 s 200(2); and **TOWN AND COUNTRY PLANNING** vol 46(2) (Reissue) PARA 855.

7 See PARA 61.

8 See PARA 128 et seq.

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119. Limited owners.

A tenant for life may enter into a forestry dedication covenant relating to the settled land or any part of it either for consideration or gratuitously¹. A university or college to which the Universities and College Estates Act 1925 applies may enter into a forestry dedication covenant relating to any land belonging to it either for consideration or gratuitously².

Provision is also made for forestry dedication with regard to glebe land or land forming part of the endowment of any other ecclesiastical corporation³.

1 Forestry Act 1967 s 5(4), Sch 2 para 1(1). As to forestry dedication covenants see PARA 116. Schedule 2 para 1(1), (2) is construed as one with the Settled Land Act 1925 (Forestry Act 1967 Sch 2 para 1(3)): in connection with the application of the Forestry Act 1967 Sch 2 see also the Countryside Act 1968 s 45(2); the Wildlife and Countryside Act 1981 s 39; the Countryside and Rights of Way Act 2000 s 16; and **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARAS 566, 580, 763. For the purposes of the Settled Land Act 1925 s 72 (which relates to the mode of giving effect to a disposition by a tenant for life and to its operation), and of any other relevant statutory provision, entering into a forestry dedication covenant must be treated as a disposition: Forestry Act 1967 Sch 2 para 1(2). As to dispositions by a tenant for life see the Settled Land Act 1925 Pt II (ss 38-72); and **SETTLEMENTS** vol 42 (Reissue) PARA 874.

2 Forestry Act 1967 Sch 2 para 2. The Universities and College Estates Act 1925 applies as if the power had been conferred by that Act: Forestry Act 1967 Sch 2 para 2. As to powers of leasing etc under the Universities and College Estates Act 1925 see **EDUCATION** vol 15(2) (2006 Reissue) PARA 1379.

3 In the case of diocesan glebe land the Diocesan Board of Finance in which the land is vested and, in the case of land which is part of the endowment of any other ecclesiastical corporation, the corporation, with the consent of the Church Commissioners, may enter into a forestry dedication covenant relating to the land either for consideration or gratuitously, and the Ecclesiastical Leasing Acts apply as if this power had been conferred by those Acts, except that the consent of the patron of an ecclesiastical benefice is not required: Forestry Act 1967 Sch 2 para 3 (amended by the Church of England (Miscellaneous Provisions) Measure 2006 Sch 5 para 14). The consent of the Church Commissioners to any such transaction relating to diocesan glebe land is required if such consent would be required under the Endowments and Glebe Measure 1976, and s 20(11) (see **ECCLESIASTICAL LAW**) applies to any such transaction as it applies to any transaction under that Measure and as if the reference therein to the requirements of that Measure included a reference to these requirements: Forestry Act 1967 Sch 2 para 3 (as so amended). These provisions do not apply in respect of incumbents: see the Endowments and Glebe Measure Act 1976 s 47, Sch 7; and see **ECCLESIASTICAL LAW**.

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(4) THE FELLING OF TREES

(i) Felling Licences

120. Restrictions on felling.

Subject to certain exceptions¹, no person may fell² any growing trees unless a licence, granted by the Forestry Commissioners³, is in force authorising the felling⁴. Where proceedings are brought for a contravention of this prohibition, the burden of proof as to whether a felling licence is required is on the defendant⁵.

Special provisions relate to the felling, lopping and topping of trees of a parsonage house and timber growing in any churchyard of a benefice, which generally requires the consent of the Diocesan Parsonages Board⁶.

1 See note 4; and PARA 121.

2 'Felling' includes wilfully destroying by any means: Forestry Act 1967 s 35.

3 For the provisions relating to application for, granting and refusal of licences see PARA 123 et seq. As to the Forestry Commissioners see PARA 34 et seq.

4 Forestry Act 1967 s 9(1). The provisions of the Forestry Act 1967 Pt II (ss 9-36) (see PARA 121 et seq) do not apply to trees standing or growing on land within the area of Greater London other than the Outer London boroughs within the meaning of the London Government Act 1963: Forestry Act 1967 s 36. Greater London comprises the London boroughs, the City of London and the Inner and Middle Temples: see the London Government Act 1963 ss 2(1), 89(1); and **LONDON GOVERNMENT** vol 29(2) (Reissue) PARA 29 et seq. As to the Outer London boroughs see s 1(1), Sch 1 Pt I; and **LONDON GOVERNMENT** vol 29(2) (Reissue) PARA 30.

5 *Forestry Commission v Grace* [1992] 1 EGLR 28, Lewes Crown Court. As to proceedings and penalties see PARA 152.

6 See the Repair of Benefice Buildings Measure 1972 s 20; and **ECCLESIASTICAL LAW** vol 14 PARA 1180.

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121. Exemption from requirement of licence.

No felling licence¹ is required:

- 438 (1) in respect of the topping or lopping of trees or the trimming or laying of hedges²;
- 439 (2) for the felling of trees of a diameter not exceeding 8 cm or, in the case of coppice or underwood, of a diameter not exceeding 15 cm³;
- 440 (3) for the felling of any fruit trees or any trees standing or growing on land comprised in an orchard, garden⁴, churchyard or public open space⁵;
- 441 (4) for the felling of any tree for the prevention of danger or the prevention or abatement of a nuisance⁶;
- 442 (5) for the felling of any tree in compliance with any obligation imposed by or under any Act of Parliament⁷;
- 443 (6) for the felling by or at the request of an electricity operator⁸ of any tree which is or will be in such close proximity to an electric line or electrical plant⁹ which is kept installed or is being or is to be installed by the operator as: (a) to obstruct or interfere with the installation, maintenance or working of the line or plant, or (b) to constitute an unacceptable source of danger¹⁰;
- 444 (7) for the felling, by any person, of trees of a diameter not exceeding 10 cm¹¹ on land in his occupation, or in the occupation of his tenant, where the felling is carried out in order to improve the growth of other trees¹²;
- 445 (8) for the felling of any tree where, for the purpose of carrying out development authorised by planning permission¹³, the felling is immediately required¹⁴; or
- 446 (9) for the felling by any person of trees on land in his occupation, or in the occupation of his tenant, so long as the aggregate cubic content of the trees to be felled without a licence does not exceed 5 cubic metres in any quarter¹⁵, and the aggregate cubic content of the trees so felled which are sold by that person, whether before or after the felling, does not exceed 2 cubic metres in any quarter or such larger quantity as the Forestry Commissioners may in any particular case allow¹⁶.

1 As to felling licences see PARA 120.

2 Forestry Act 1967 s 9(2)(c).

3 Forestry Act 1967 s 9(2)(a) (s 9(2)(a), (5), (6) amended by the Forestry Act 1979 Sch 1). 'Diameter' means the diameter measured over the bark at a point 1.3 m above ground level: Forestry Act 1967 s 9(6) (as so amended). The Forestry Commissioners have power by regulations to specify an increase in the diameter of 8 cm (Forestry Act 1967 s 9(5)(a)(i) (as so amended)), and a reduction in the diameter of 15 cm (s 9(5)(b) (as so amended)). At the date at which this volume states the law no such regulations had been made. As to the Forestry Commissioners see PARA 34 et seq.

4 'Garden' is to be given its ordinary meaning as an 'inclosed piece of ground devoted to the cultivation of flowers, fruit or vegetables'; and when determining whether an area of land is a garden for these purposes, regard must be had not only to the history of the land, but also to its state at the time of any offence and to any intention of the owner as to use of that land (although the mere assertion of intention to use land as a garden would not establish its status as a garden for these purposes): see *McInerney v Portland Port Ltd* [2001] 1 PLR 104, [2000] All ER (D) 2286, DC; *Rockall v Department of the Environment, Food and Rural Affairs* [2008] EWHC 2408 (Admin), [2008] All ER (D) 44 (Jul).

5 Forestry Act 1967 s 9(2)(b). 'Public open space' means land which is laid out as a public garden or which is a disused burial ground, or which is used for public recreation otherwise than in pursuance of the Law of Property Act 1925 s 193 or the National Parks and Access to the Countryside Act 1949 Pt V (ss 59-83) or the Countryside and Rights of Way Act 2000 Pt I (ss 1-46); Forestry Act 1967 s 9(6) (definition amended by the Countryside and Rights of Way Act 2000 Sch 4, para 2)). It does not, however, include a country park or a park or pleasure ground in the Lee Valley Regional Park: see the Countryside Act 1968 s 24(4); and see further **OPEN SPACES AND COUNTRYSIDE**.

6 Forestry Act 1967 s 9(4)(a).

7 Forestry Act 1967 s 9(4)(b). 'Act of Parliament' includes the Forestry Act 1967: s 9(4)(b).

8 'Electricity operator' means a licence holder within the meaning of the Electricity Act 1989 Pt I (ss 3A-64) (see **FUEL AND ENERGY** vol 19(2) (2007 Reissue) PARA 1041 et seq) by whom the powers conferred by Sch 4 para 9 (tree lopping) are exercisable: Forestry Act 1967 s 9(6) (definition amended by the Electricity Act 1989 Sch 16 para 13). As to the meaning of 'licence holder' for those purposes see **FUEL AND ENERGY** vol 19(2) (2007 Reissue) PARA 1041.

9 'Electric line' and 'electrical plant' have the same meanings as in the Electricity Act 1989 Pt I (see **FUEL AND ENERGY** vol 19(2) (2007 Reissue) PARA 1041): Forestry Act 1967 s 9(6) (as amended: see note 8).

10 Forestry Act 1967 s 9(4)(c) (amended by the Electricity Act 1989 Sch 16 para 13). The references in the text to obstructing or interfering with the installation, maintenance or working of a line or plant and to constituting an unacceptable source of danger are references to having the effect mentioned in the Electricity Act 1989 Sch 4 para 9(1)(a) or (b): Forestry Act 1967 s 9(4)(c) (as so amended). As to the right of electricity operators to require the felling of trees see **FUEL AND ENERGY** vol 19(2) (2007 Reissue) PARA 1295.

11 The Commissioners have power, by regulations, to specify an increase in the diameter of 10 cm: Forestry Act 1967 s 9(5)(a)(ii) (as amended: see note 3). At the date at which this volume states the law no such regulations had been made.

12 Forestry Act 1967 s 9(3)(a) (amended by the Forestry Act 1979 Sch 1).

13 The planning permission granted or deemed to be granted under the Town and Country Planning Act 1990 or the enactments replaced by that Act: see **TOWN AND COUNTRY PLANNING**.

14 Forestry Act 1967 s 9(4)(d) (amended by the Planning (Consequential Provisions) Act 1990 Sch 2 para 14(1)).

15 'Quarter' means the period of three months beginning with 1 January, 1 April, 1 July or 1 October in any year: Forestry Act 1967 s 9(6).

16 Forestry Act 1967 s 9(3)(b) (amended by the Forestry Act 1979 Sch 1; and SI 1985/1958). The aggregate cubic content of the trees felled without licence, and the aggregate cubic content of trees so felled which are sold before or after the felling, are exclusive of trees the felling of which without a licence is authorised by any other provision: Forestry Act 1967 s 9(3)(b)(i), (ii). The Commissioners have power by regulation to specify an increase or a reduction in the quantities of 5 cubic metres and 2 cubic metres (s 9(5)(a)(iii), (c) (amended by the Forestry Act 1979 Sch 1)); and they may also, by regulations, restrict or suspend this exception (Forestry Act 1967 s 9(5)(c) (as so amended)). In exercise of this power the Forestry (Modification of Felling Restrictions) Regulations 1985, SI 1985/1958, were made.

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122. Additional exemptions.

The Forestry Commissioners¹ have power by regulations to provide for additional exceptions from the provisions requiring a licence for felling².

By regulations so made, no licence is required for:

- 447 (1) the felling of any tree where the Secretary of State³ certifies that the tree obstructs the approach of aircraft to, or their departure from, any aerodrome⁴, or hinders the safe and efficient use of air navigational or aircraft landing installations⁵;
- 448 (2) the felling by statutory undertakers⁶ of trees on land in their occupation which obstruct the construction of any works required for the purposes of their undertaking, or of trees which interfere with the maintenance or operation of any works vested in them⁷;
- 449 (3) the felling of any tree by or at the request of the Environment Agency or a water or sewerage undertaker⁸ or an internal drainage board⁹, where the tree interferes or would interfere with the functions of that Agency, undertaker or board¹⁰;
- 450 (4) the felling of trees on land which is subject to an agreement with the Forestry Commissioners for the land to be devoted to forestry¹¹ where the agreement is a forestry dedication covenant, any positive covenants or terms on the landowner's part contained in the same document as the covenant or agreement are at the time of felling binding on the person who is then the owner of the land¹² and the felling is in accordance with a plan of operations¹³ approved by the Commissioners under such a document¹⁴;
- 451 (5) the felling of trees on land which is subject to such an agreement¹⁵, not made by deed¹⁶, being land at the time of felling owned by the person who entered into the agreement with the Commissioners¹⁷ and in accordance with a plan of operations approved by the Commissioners¹⁸; or
- 452 (6) felling an elm which is so affected by Dutch elm disease that the greater part of the crown of the tree is dead¹⁹.

1 As to the Forestry Commissioners see PARA 34 et seq.

2 Forestry Act 1967 s 9(5)(a). As to the requirement and statutory exceptions see PARAS 120-121.

3 I.e. the Secretary of State for Defence or the Secretary of State for Business, Enterprise and Regulatory Reform (formerly the Secretary of State for Trade and Industry): see the Forestry (Exceptions from Restriction of Felling) Regulations 1979, SI 1979/792, reg 4(1); and the Transfer of Functions (Trade and Industry) Order 1983, SI 1983/1127, art 2(1).

4 'Aerodrome' means any area of land or water designed, equipped, set apart or commonly used for affording facilities for the landing and departure of aircraft: Forestry (Exceptions from Restriction of Felling) Regulations 1979, SI 1979/792, reg 3.

5 Forestry (Exceptions from Restriction of Felling) Regulations 1979, SI 1979/792, reg 4(1).

6 'Statutory undertakers' means persons authorised by any enactment to carry on any railway, light railway, tramway, road transport, water transport, canal, inland navigation, dock, harbour, power or lighthouse undertaking, or any undertaking for the supply of hydraulic power or water, and gas transporters within the meaning of the Gas Act 1986 Pt I (ss 4A-48) (see **FUEL AND ENERGY** vol 19(2) (2007 Reissue) PARA 789 et seq; and as to the meaning of 'gas transporter' see **FUEL AND ENERGY** vol 19(2) (2007 Reissue) PARA 805): Forestry

(Exceptions from Restriction of Felling) Regulations 1979 reg 3 (definition amended by SI 1986/1356; SI 1990/526; SI 1996/252).

7 Forestry (Exceptions from Restriction of Felling) Regulations 1979, SI 1979/792, reg 4(2).

8 The statutory wording is 'a water authority established under the Water Act 1973' (repealed). Water authorities were abolished and their functions transferred to the National Rivers Authority (now replaced by the Environment Agency), water and sewerage undertakers by the Water Act 1989. As to their functions see generally the Water Resources Act 1991; the Water Industry Act 1991; the Water Industry Act 1999; the Water Act 2003; **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH; WATER AND WATERWAYS**.

9 Is an internal drainage board for the purposes of the Land Drainage Act 1991 and the Water Resources Act 1991: see further **WATER AND WATERWAYS** vol 101 (2009) PARA 569 et seq.

10 Forestry (Exceptions from Restriction of Felling) Regulations 1979, SI 1979/792, reg 4(3).

11 Is made under the Forestry Act 1967 s 5(1): see PARA 116. As to forestry dedication covenants see PARAS 116-119.

12 Forestry (Exceptions from Restriction of Felling) Regulations 1979, SI 1979/792, reg 4(5)(a)(i).

13 As to plans of operations see PARA 116.

14 Forestry (Exceptions from Restriction of Felling) Regulations 1979, SI 1979/792, reg 4(5)(a)(ii).

15 See the text and note 11.

16 See the Law of Property (Miscellaneous Provisions) Act 1989 s 1; and **DEEDS AND OTHER INSTRUMENTS** vol 13 (2007 Reissue) PARAS 8, 33.

17 Forestry (Exceptions from Restriction of Felling) Regulations 1979, SI 1979/792, reg 4(5)(b)(i).

18 Forestry (Exceptions from Restriction of Felling) Regulations 1979, SI 1979/792, reg 4(5)(b)(ii).

19 Forestry (Exceptions from Restriction of Felling) Regulations 1979, SI 1979/792, reg 4(4).

UPDATE

122 Additional exemptions

NOTE 3--The Secretary of State for Business, Enterprise and Regulatory Reform has been redesignated as the Secretary of State for Business, Innovation and Skills: see the Secretary of State for Business, Innovation and Skills Order 2009, SI 2009/2748.

Halsbury's Laws of England/FORESTRY (VOLUME 52 (2009) 5TH EDITION)/2. TIMBER AND TREES/(4) THE FELLING OF TREES/(i) Felling Licences/123. Applications for and grant of felling licences.

123. Applications for and grant of felling licences.

An application for a felling licence for trees¹ must be made to the Forestry Commissioners² in the manner they prescribe³. The application may be made by any person having such an estate or interest in the land on which the trees are growing as enables him, with or without the consent of any other person, to fell trees⁴.

On receiving any application the Commissioners may, if they think it expedient in the interests of good forestry or agriculture, or of the amenities of the district or for the purpose of complying with their statutory duty of promoting the establishment and maintenance of adequate reserves of growing trees⁵, either refuse to grant a licence or grant a conditional licence⁶. In any other case the Commissioners must grant a licence unconditionally⁷.

In considering an application the Commissioners must take into account any advice tendered to them by the regional advisory committee⁸ for the conservancy⁹ in which the trees are growing¹⁰.

Any licence granted continues in force for such period of not less than one year from the date it was granted as may be specified in the licence¹¹.

1 As to the necessity for a felling licence see PARA 120. As to the meaning of 'felling' see PARA 120 note 2.

2 As to the Forestry Commissioners see PARA 34 et seq.

3 Forestry Act 1967 s 10(1). 'Prescribed' means prescribed by regulations made by the Commissioners under Pt II (ss 9-36): s 35. An application for a felling licence made to the Commissioners under s 10(1) must: (1) be in writing or in the form of an electronic communication; (2) be signed, or authenticated, and dated; (3) include the particulars specified in the Forestry (Felling of Trees) Regulations 1979, SI 1979/791, Sch 2 (substituted by SI 2002/226); and (4) be accompanied by an Ordnance Survey map signed, or authenticated, and dated by the applicant showing the area to which the application relates on a scale not smaller than one to ten thousand and with the National Grid reference of the north west corner of the area marked on the map: reg 4 (substituted by SI 2002/226). 'Electronic communication' means a communication transmitted (whether from one person to another, from one device to another or from a person to a device or vice versa): (a) by means of an electronic communications network; or (b) by other means but while in an electronic form: Forestry (Felling of Trees) Regulations 1979, SI 1979/791, reg 3(1) (definition added by SI 2002/226; amended by SI 2003/2155). References to an application or a map being 'authenticated' are references to there being incorporated into or otherwise logically associated with it something in electronic form for the purpose of establishing whether it comes from a particular person or other source and, if applicable, whether it is accurately timed and dated, and whether it is intended to have legal effect: Forestry (Felling of Trees) Regulations 1979, SI 1979/791, reg 3(1A) (added by SI 2002/226).

The specified particulars are as follows (Forestry (Felling of Trees) Regulations 1979, SI 1979/791, Sch 2 (as so substituted)), ie:

- 87 (i) the full name and address of the applicant;
- 88 (ii) the applicant's estate or interest in the land on which the trees in respect of which a felling licence is sought are growing;
- 89 (iii) the full name and address of any person whose consent is needed to fell the trees and whether such consent has been given;
- 90 (iv) the type of felling proposed;
- 91 (v) the trees (including the species) which the applicant proposes to fell;
- 92 (vi) the proposed date of commencement and estimated date of completion of felling;

- 93 (vii) any proposal for restocking the felled areas and/or any other areas;
 - 94 (viii) whether any tree preservation order (made or having effect as if made under the Town and Country Planning Act 1990 s 198: see **TOWN AND COUNTRY PLANNING** vol 46(2) (Reissue) PARA 850) affects the trees in question; and
 - 95 (ix) whether any tree is in a conservation area (designated under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 69: see **TOWN AND COUNTRY PLANNING** vol 46(3) (Reissue) PARA 1169).
- 4 Forestry Act 1967 s 10(1).
- 5 As to that duty see PARA 38.
- 6 Forestry Act 1967 s 10(2) (amended by SI 1999/1747). As to the conditions which can be imposed see PARA 124. No conditions may be imposed in a licence for felling trees on land subject to a forestry dedication covenant: see PARA 128.
- 7 Forestry Act 1967 s 10(2).
- 8 As to the regional advisory committees see PARA 36.
- 9 As to the meaning of 'conservancy' see PARA 36 note 5.
- 10 Forestry Act 1967 ss 10(2), 37(3)(a).
- 11 Forestry Act 1967 s 10(3).

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124. Conditions on grant of a felling licence.

The Forestry Commissioners¹ may grant a felling licence² subject to such conditions as, after consulting with the applicant for the licence, they think expedient for securing: (1) the restocking or stocking with trees of the land on which the felling takes place, or of such other land as the Commissioners and the applicant agree³; and (2) the maintenance of such trees in accordance with the rules and practice of good forestry for a period not exceeding ten years⁴. If it appears to the Commissioners on granting a conditional licence that the applicant is not entitled to such interest in land as would enable him to comply with any conditions determined, they may, after giving written notice⁵ to the applicant, postpone consideration of the application until the person entitled to that interest joins in the application⁶.

1 As to the Forestry Commissioners see PARA 34 et seq.

2 As to felling licences see PARA 120 et seq.

3 Forestry Act 1967 s 12(1)(a). Conditions of this nature may not be imposed in relation to Crown land without the consent of the appropriate authority: s 33(3)(a). See PARA 134.

4 Forestry Act 1967 s 12(1)(b).

5 As to the service of notices see PARA 154.

6 Forestry Act 1967 s 13(2).

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125. Refusal of felling licences.

If the Forestry Commissioners¹ do not give notice to an applicant for a felling licence² of their decision³ on the application within three months after receipt of the application⁴ or within such further time as may be agreed with the applicant, the application is to be treated as if the licence to which it relates had been refused⁵. On a refusal to grant a licence the Commissioners must give written notice⁶ to the applicant of the grounds of refusal⁷.

1 As to the Forestry Commissioners see PARA 34 et seq.

2 As to felling licences see PARA 120 et seq.

3 'Decision' includes any reference made by the Forestry Commissioners to the Secretary of State or the Welsh Ministers or to the authority by which a tree preservation order (see PARA 61) was made in a case where the trees which it is proposed to fell are subject to a tree preservation order and the local planning authority objects to the grant of a felling licence (see the Forestry Act 1967 s 15; and PARAS 130-132): s 13(1). As to the Secretary of State and the Welsh Ministers see PARA 2. As to the meaning of 'local planning authority' see PARA 61 note 1.

4 Where consideration of the application has been postponed (see PARA 124), the three months' period runs from the date of joinder in the application of a person having sufficient interest in the land: Forestry Act 1967 s 13(2).

5 Forestry Act 1967 s 13(1).

6 As to the service of notices see PARA 154.

7 Forestry Act 1967 s 10(6).

Halsbury's Laws of England/FORESTRY (VOLUME 52 (2009) 5TH EDITION)/2. TIMBER AND TREES/(4) THE FELLING OF TREES/(i) Felling Licences/126. Review of refusal or conditions of licence.

126. Review of refusal or conditions of licence.

If the Forestry Commissioners¹ refuse to grant a felling licence, or grant such a licence subject to conditions², any person aggrieved³ by the refusal, or the conditions, may by notice⁴ request the Secretary of State or the Welsh Ministers⁵ to refer the matter to a committee appointed for the purposes of reviewing the decision⁶ and, unless he considers the grounds for the request are frivolous, he must refer the matter accordingly⁷. However, an applicant for a felling licence which has been refused cannot request a reference to a committee unless a previous application for such a licence has been refused and the application to which the request for a reference relates is made after one of the following periods, that is either: (1) where a reference to a committee has been made in respect of any previous application for a licence relating to the trees, the third anniversary of the last such application in respect of which such a reference has been made; or (2) in any other case, the third anniversary of the first previous application relating to the trees⁸.

1 As to the Forestry Commissioners see PARA 34 et seq.

2 As to felling licences see PARA 120; as to a conditional licence see PARA 124.

3 As to the meaning of 'person aggrieved' see **JUDICIAL REVIEW** vol 61 (2010) PARA 656.

4 The notice must be served within three calendar months after: (1) in the case of express refusal of a licence, the receipt by the applicant of a notice to that effect (Forestry (Felling of Trees) Regulations 1979, SI 1979/791, reg 8(1)(a); and see PARA 125); (2) in the case of deemed refusal (see PARA 125), the expiration of any period of time allowed for the determination of the application (reg 8(1)(b)); and (3) in the case of the grant of a licence subject to conditions, the receipt of the licence by the applicant (reg 8(1)(c)). For the prescribed forms of notice see reg 8(2), Sch 1 Forms 4-6. As to the service of notices see PARA 154.

5 As to the Secretary of State and the Welsh Ministers see PARA 2.

6 In accordance with the Forestry Act 1967 s 27: s 16(2). As to the composition of the committee and the hearing see PARA 127.

7 Forestry Act 1967 s 16(1), (2) (amended by SI 1999/1747). Similar provisions apply where the Commissioners have served a restocking notice under the Forestry Act 1967 s 17A: see s 17B; and PARA 153.

8 Forestry Act 1967 s 16(4).

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127. Composition of and hearing by the committee.

The committee to which reference is to be made on review of a refusal of, or of the conditions of, a felling licence¹ must consist of a chairman appointed by the Secretary of State or the Welsh Ministers², and two other members selected by the Secretary of State or the Welsh Ministers from a panel of persons appointed by him or them for the conservancy³ in which the trees are growing⁴, after consultation with the regional advisory committee⁵ for that conservancy⁶, organisations appearing to him to represent the interests of owners of woodlands and timber merchants respectively⁷, and organisations concerned with the study and promotion of forestry⁸. No Forestry Commissioner or person employed by the Commissioners may be a member of any such committee⁹.

The committee must:

- 453 (1) afford to the person concerned with the subject matter of the reference¹⁰ an opportunity of appearing before it and making representations to it on the matter in question¹¹;
- 454 (2) if it thinks fit, or if it is so required by the person who made the request, inspect the trees or the land concerned¹²; and
- 455 (3) take into consideration any information given to it by the Commissioners as to the performance of their duty to promote the establishment and maintenance of growing trees¹³ within the conservancy in which the trees are growing¹⁴.

The committee must then make a report to the Secretary of State or the Welsh Ministers¹⁵ and after considering the report the minister must either confirm the Commissioners' decision on the application or reverse or modify the decision and direct the Commissioners to give effect to the reversal or modification¹⁶.

1 As felling licences see PARA 120 et seq; as to references to the committee see PARA 126.

2 Forestry Act 1967 s 27(1)(a) (s 27(1)-(3) amended by SI 1999/1747). As to the Secretary of State and the Welsh Ministers see PARA 2.

3 As to the meaning of 'conservancy' see PARA 36 note 5.

4 Forestry Act 1967 s 27(1)(b) (as amended: see note 2).

5 As to regional advisory committees see PARA 36.

6 Forestry Act 1967 s 27(2)(a).

7 Forestry Act 1967 s 27(2)(b) (as amended: see note 2).

8 Forestry Act 1967 s 27(2)(c).

9 Forestry Act 1967 s 27(1) proviso. As to the Forestry Commissioners see PARA 34 et seq.

10 Ie the person at whose request the reference was made: Forestry Act 1967 s 27(3).

11 Forestry Act 1967 s 27(3)(a).

12 Forestry Act 1967 s 27(3)(b).

- 13 le under the Forestry Act 1967 s 1(3): see PARA 38.
- 14 Forestry Act 1967 s 27(3)(c) (as amended: see note 2).
- 15 Forestry Act 1967 s 16(2)(b) (s 16(2), (3) amended by SI 1999/1747).
- 16 Forestry Act 1967 s 16(3) (as amended: see note 15).

Halsbury's Laws of England/FORESTRY (VOLUME 52 (2009) 5TH EDITION)/2. TIMBER AND TREES/(4) THE FELLING OF TREES/(i) Felling Licences/128. Trees subject to forestry dedication covenants.

128. Trees subject to forestry dedication covenants.

Where application is made for a felling licence in respect of trees on land which is subject to a forestry dedication covenant¹ and the felling is in accordance with a plan of operations or other working plan approved by the Forestry Commissioners² and in force under the covenant, no conditions³ may be imposed on the grant of the licence applied for⁴; and no breach of such a covenant is to be deemed to have occurred by reason of anything done or omitted in consequence of the refusal of such a licence⁵.

On an application being made for a licence for the felling of trees in accordance with a plan of operations⁶ or other working plan approved by the Commissioners under a dedication covenant, or otherwise approved by them in writing for this particular purpose, they must not refuse the licence unless the Secretary of State or the Welsh Ministers⁷ certifies or certify that, by reason of an act of God or other emergency which has taken place or arisen since the approval of the plan, the granting of a licence in respect of those trees, or in respect of trees of any class which comprises those trees, would be detrimental to the national interest⁸.

1 As to forestry dedication covenants see PARAS 116-119.

2 As to the Forestry Commissioners see PARA 34 et seq.

3 As to conditions being imposed see PARA 124.

4 Forestry Act 1967 s 12(2) (amended by the Trees Act 1970 s 2).

5 Forestry Act 1967 s 10(7).

6 As to the plan of operations see PARA 116.

7 As to the Secretary of State and the Welsh Ministers see PARA 2.

8 Forestry Act 1967 s 14(1), (2) (amended by SI 1999/1747).

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129. Rights when licence refused.

If a felling licence¹ is refused in respect of trees on land subject to a forestry dedication covenant², the applicant for the licence may give notice³ to the Forestry Commissioners⁴ requiring them to buy the trees in respect of which the licence is refused, or such of those trees as may be specified in the notice⁵. Where such a notice is served, no compensation⁶ is payable to the owner in respect of the trees to which the notice relates⁷, but the Commissioners are deemed to have contracted with the applicant to buy the trees on the date of service of the notice at such prices as, failing agreement, may be settled by the Upper Tribunal⁸, and they may fell and remove the trees at such time as they may determine⁹.

On refusal of a felling licence in respect of trees on land subject to a forestry dedication covenant, the Commissioners may make a loan in respect of those trees, but this does not apply to trees in respect of which a notice has been served requiring the Commissioners to buy those trees¹⁰.

1 As to felling licences see PARA 120 et seq.

2 As to forestry dedication covenants see PARA 116-119.

3 The notice must be given in the manner and within the time prescribed by regulations: Forestry Act 1967 s 14(3). Notice must be sent to the conservator for the conservancy in which the trees are growing within three months after receipt by the applicant of notice of the Commissioners' refusal: Forestry (Felling of Trees) Regulations 1979, SI 1979/791, reg 6. For the prescribed form see Sch 1 Form 3. As to the service of notices generally see PARA 154.

4 As to the Forestry Commissioners see PARA 34 et seq.

5 Forestry Act 1967 s 14(3).

6 Compensation is normally payable to the owner of trees in respect of which a felling licence has been refused: see the Forestry Act 1967 s 11; and PARA 135 et seq.

7 Forestry Act 1967 s 14(4)(a).

8 Forestry Act 1967 ss 14(4)(b), 31(1)(a) (amended by SI 2009/1307). As to the procedure before the Lands Chamber of the Upper Tribunal see **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 744.

9 Forestry Act 1967 s 14(4)(b).

10 See the Forestry Act 1967 ss 10(4)(b), 14(5). As to the Commissioners' powers to make loans on refusal of a felling licence see PARA 137.

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130. Trees subject to preservation order.

Notwithstanding anything in a tree preservation order¹, a felling licence granted or directions given by the Forestry Commissioners² after the date on which the order comes into force is sufficient authority for the felling of any trees³. Subject to certain exceptions⁴, no application may be entertained under a tree preservation order for consent to fell any trees, the felling of which requires a licence from the Forestry Commissioners⁵.

1 As to tree preservation orders see PARA 61.

2 As to the necessity for a licence see PARA 120, and as to directions being given see PARA 132. As to the Forestry Commissioners see PARA 34 et seq.

3 Forestry Act 1967 s 15(6).

4 See the Forestry Act 1967 s 15(1)-(4); and PARA 131.

5 Forestry Act 1967 s 15(5). Application for consent to fell trees which are the subject of a tree preservation order would, but for this provision, be made to a local planning authority and a further application for a felling licence would have to be made to the Forestry Commissioners unless the felling was exempt under s 9(2)-(4): see PARA 121. This provision avoids duplication of applications where the felling requires a licence; where no licence is required, eg in respect of trees in Greater London other than the Outer London boroughs (see PARA 120 note 4), no possibility of duplication arises and the application is made to the local planning authority. As to the meaning of 'local planning authority' see PARA 61 note 1.

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131. Procedure where licence proposed to be given.

If the Forestry Commissioners¹ propose to grant a felling licence² in respect of any trees for which consent is required under a tree preservation order³, they must give notice in writing⁴ of the proposal to the local planning authority which made the order⁵. If within one calendar month⁶ after the receipt of the notice the authority objects to the proposal, and the objection is not withdrawn, the Commissioners cannot deal with the application but must refer it to the Secretary of State or to the Welsh Ministers⁷ and it must then be dealt with under the Town and Country Planning Act 1990⁸. On such a reference the provisions of the tree preservation order and any provisions of the Town and Country Planning Act 1990 relating to that order apply as if the application were an application under the order for consent to the felling of the trees and referred to the Secretary of State or to the Welsh Ministers in pursuance of the provisions of the order applying certain provisions of that Act⁹, and, if the order contains no such provisions, it is to take effect for these purposes as if the relevant provisions of that Act were incorporated in it, subject to such modifications as the Secretary of State or the Welsh Ministers may direct¹⁰. Further, if consent for the felling is given by the Secretary of State or the Welsh Ministers in pursuance of the application, no felling licence is required for the felling of any trees in accordance with that consent¹¹. It is, however, open to the Commissioners to refer the application to the authority by which the tree preservation order was made¹², and in that event: (1) as long as the order remains in force, no felling licence is necessary for the felling of any trees to which the application relates¹³, and no direction is to be given requiring the felling of such trees¹⁴; (2) the provisions of the order and of the Town and Country Planning Acts relating to the order apply as if the application had been made to the authority under the order for consent for the felling of the trees¹⁵.

Where an application for a felling licence is referred by the Commissioners to the Secretary of State or the Welsh Ministers or to the authority by which the tree preservation order was made, then, in calculating any compensation payable in consequence of any previous refusal of a licence in respect of the trees¹⁶, no account is to be taken of deterioration occurring after the date of the reference¹⁷.

1 As to the Forestry Commissioners see PARA 34 et seq.

2 As to felling licences see PARA 120 et seq.

3 As to the requirement for consent see PARA 61.

4 As to the service of notices see PARA 154.

5 Forestry Act 1967 s 15(1)(a). As to the meaning of 'local planning authority' see PARA 61 note 1.

6 The period is that prescribed by the Forestry (Felling of Trees) Regulations 1979, SI 1979/791, reg 7.

7 As to the Secretary of State and the Welsh Ministers see PARA 2.

8 Forestry Act 1967 s 15(2)(a).

9 Forestry Act 1967 Sch 3 paras 1, 2(a) (amended by the Planning (Consequential Provisions) Act 1990 s 4, Sch 2 para 14(3)). The provision of the Town and Country Planning Act 1990 referred to is s 77: see the Forestry Act 1967 Sch 3 para 2(a) (as so amended); and **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 481.

10 Forestry Act 1967 Sch 3 para 2(b) (as amended: see note 9).

- 11 Forestry Act 1967 s 15(2)(b).
- 12 Forestry Act 1967 s 15(1)(b).
- 13 Forestry Act 1967 s 15(3)(b).
- 14 Forestry Act 1967 s 19(2). As to directions see PARA 139 et seq.
- 15 Forestry Act 1967 s 15(3)(a), Sch 3 para 3 (as amended: see note 9).
- 16 Ie under the Forestry Act 1967 s 11: see PARA 135 et seq.
- 17 Forestry Act 1967 s 15(4). This provision is without prejudice to s 11(5) (see PARA 136), where that provision applies: s 15(4).

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132. Directions for felling trees subject to preservation order.

If the Forestry Commissioners¹ propose to give directions² requiring the felling of any trees which are subject to a tree preservation order³ they must give notice in writing⁴ to the authority which made the order, and if, within one calendar month⁵ after receiving the notice, the authority objects to the proposal and the objection is not withdrawn, the Commissioners cannot give directions without the consent of the Secretary of State or the Welsh Ministers⁶ who must, before granting or refusing consent, consult with the authority concerned⁷.

1 As to the Forestry Commissioners see PARA 34 et seq.

2 As to giving directions see PARA 139.

3 As to tree preservation orders see PARA 61.

4 See PARA 131.

5 Forestry (Felling of Trees) Regulations 1979, SI 1979/791, reg 9: see PARA 125 note 4.

6 As to the Secretary of State and the Welsh Ministers see PARA 2.

7 Forestry Act 1967 s 19(3).

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133. Identification of trees.

Any person authorised by the Forestry Commissioners¹ may take steps, by marking or otherwise, as the Commissioners consider necessary, for identifying trees the subject of a felling licence² or felling directions³, or for the felling of which such a licence has been refused⁴.

1 As to the Forestry Commissioners see PARA 34 et seq.

2 As to the necessity for a felling licence see PARA 120 et seq.

3 As to felling directions see PARA 139 et seq.

4 Forestry Act 1967 s 28.

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134. Conditions on felling of trees on Crown land.

On the grant of a felling licence¹ no conditions may be imposed relating to the stocking or restocking of Crown land² and no directions³ may be given requiring the felling of trees growing on it without the consent of the appropriate authority⁴. Subject to this restriction the provisions of the Forestry Act 1967 apply in relation to Crown land and to trees growing on it to the extent only of any estate or interest in the Crown land which is held otherwise than on behalf of the Crown⁵.

1 As to felling licences see PARA 120 et seq.

2 'Crown land' means land an interest in which belongs to Her Majesty in right of the Crown or of the Duchy of Lancaster, or to the Duchy of Cornwall, and land an interest in which belongs to a government department or is held in trust for Her Majesty for the purposes of a government department: Forestry Act 1967 s 33(1). See **CROWN PROPERTY** vol 12(1) (Reissue) PARA 278 et seq.

3 As to directions see PARA 139 et seq.

4 Forestry Act 1967 s 33(3). 'Appropriate authority' means: (1) in the case of land belonging to Her Majesty in right of the Crown, the Crown Estate Commissioners or other government department having the management of the land in question; (2) in the case of land belonging to Her Majesty in right of the Duchy of Lancaster, the Chancellor of the Duchy; (3) in the case of land belonging to the Duchy of Cornwall, such person as the Duke of Cornwall or the possessor for the time being of the Duchy of Cornwall appoints; and (4) in the case of land belonging to a government department or held in trust for Her Majesty for the purposes of a government department, that department; and if any question arises as to what authority is the appropriate authority in relation to any land it is to be referred to the Treasury, whose decision is final: s 33(5). This Treasury function is not transferred in relation to Wales: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1; and PARA 2. As to the Crown Estate and the Crown Estate Commissioners see **CROWN PROPERTY** vol 12(1) (Reissue) PARAS 278-299.

5 Forestry Act 1967 s 33(2).

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(ii) Compensation and Loans on Refusal of Felling Licence

135. Compensation for refusal of licence.

Where an application for a felling licence¹ is refused², any person who is for the time being the owner of the trees³ may, on making a claim in the prescribed manner⁴, recover from the Forestry Commissioners compensation for any depreciation in the value of the trees which is attributable to deterioration in the quality of the timber comprised in those trees in consequence of the refusal⁵. Claims may only be made for deterioration taking place after the refusal of the licence⁶, but no claim may be made for deterioration which took place more than ten years before the date of the claim⁷ and, if the trees have been felled, no claim may be made after the expiration of one year from the date of the felling⁸. In calculating the compensation payable, no account may be taken of any deterioration in the quality of the timber in the trees which is attributable to neglect of the trees after the date of the refusal of the licence⁹, and the value of the trees at any time must be ascertained on the basis of prices current at the date of the claim¹⁰. Any question of disputed compensation under these provisions must be determined by the Upper Tribunal¹¹.

1 As to applications for felling licences see PARA 123.

2 As to the refusal of a felling licence see PARA 125.

3 In relation to trees, 'owner' means the owner of land on which they are growing and, in the case of trees which have been felled, the person who was owner immediately before their felling: Forestry Act 1967 s 34(1), (4). In relation to land in England or Wales, 'owner' means the person in whom for the time being is vested the legal estate in fee simple, except that where in relation to all or any of the provisions of Pt II (ss 9-36) (see PARAS 120 et seq, 136 et seq): (1) all persons appearing to the Secretary of State or the Welsh Ministers to be concerned agree, with the approval of the Secretary of State or the Welsh Ministers, that some person is to be treated as the owner of the land other than the person who would be so treated apart from the agreement; or (2) on an application in that behalf to the agricultural land tribunal established under the Agriculture Act 1947 Pt V (ss 73-111) (see **AGRICULTURAL LAND** vol 1 (2008) PARAS 670-673), the tribunal determines, having regard to the respective interests of the persons interested in the land, that some person is to be treated as the owner of the land other than the person who would be so treated apart from the determination, that person is to be so treated, but without prejudice to a subsequent agreement or determination, or to his ceasing to be so treated, if the minister withdraws his approval under head (1) above: Forestry Act 1967 s 34(2). As to the Secretary of State and the Welsh Ministers see PARA 2.

4 The claim must be made to the conservator for the conservancy in which the trees are growing: see the Forestry (Felling of Trees) Regulations 1979, SI 1979/791, reg 5. For the prescribed form see Sch 1 Form 1. The Forestry Commissioners may require any particulars specified in the claim to be verified by a statutory declaration: reg 16 (substituted by SI 1987/632). As to the Forestry Commissioners see PARA 34 et seq. As to statutory declarations see **CIVIL PROCEDURE** vol 11 (2009) PARA 1024.

5 Forestry Act 1967 ss 10(4)(a), 11(1), (2). For the principles to be followed in granting compensation see *Cardigan Timber Co v Cardiganshire County Council* (1957) 9 P & CR 158 at 184, Lands Tribunal.

6 Forestry Act 1967 s 11(3).

7 Forestry Act 1967 s 11(3)(a).

8 Forestry Act 1967 s 11(3)(b).

9 Forestry Act 1967 s 11(4)(a).

10 Forestry Act 1967 s 11(4)(b); and see *Winders v Forestry Commission* (1958) 9 P & CR 500, Lands Tribunal.

11 Forestry Act 1967 ss 11(6), 31(1)(a) (amended by SI 2009/1307). As to the procedure before the Lands Chamber of the Upper Tribunal see **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 744.

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136. Compensation when licence granted after initial refusal.

At any time after a felling licence has been refused¹ the Forestry Commissioners² may, if they think fit, give notice³ to the owner⁴ of the trees that they are prepared to grant a licence either unconditionally or subject to conditions described in the notice⁵. In such a case they must grant a licence in accordance with the notice, if an application is duly made in that behalf⁶. In calculating any compensation payable in consequence of the previous refusal of a licence, no account may be taken of any deterioration occurring after the giving of the notice⁷.

1 As to refusal of a felling licence see PARA 125; and as to felling licences generally see PARAS 120 et seq.

2 As to the Forestry Commissioners see PARA 34 et seq.

3 As to the service of notices see PARA 154.

4 As to the meaning of 'owner' see PARA 135 note 3.

5 Forestry Act 1967 s 10(5). As to conditions in licences see PARA 124.

6 Forestry Act 1967 s 10(5). This provision is subject to those set out in s 13(2) (see PARAS 124-125), and s 15 (see PARAS 130-131): s 10(5).

7 Forestry Act 1967 s 11(5). As to disputed compensation see PARA 135.

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137. Power to make loans on refusal of licence.

Where a licence for felling trees on any land is refused¹, then, if the land is managed in a manner approved by the Forestry Commissioners² or if it will, in their opinion, be so managed, they may, if they think fit, make to persons interested in the land advances by way of loan of such amounts upon such terms and subject to such conditions as they may determine³.

1 As to refusal of a felling licence see PARA 125; and as to felling licences generally see PARAS 120 et seq.

2 As to the Forestry Commissioners see PARA 34 et seq.

3 Forestry Act 1967 s 10(4)(b) (amended by SI 1999/1747). This provision is subject to the provisions of the Forestry Act 1967 s 14(5) (see PARA 129): s 10(4)(b). Treasury approval is required in the case of land in England: see s 10(4)(b).

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138. Compensation relating to mortgaged and settled land.

Where the interest of the owner of any trees¹ is for the time being subject to a mortgage², a claim for compensation for refusal to grant a felling licence³, or for a sum payable by the Forestry Commissioners⁴ under their powers of felling and disposing of trees⁵, may be made either by the mortgagor or mortgagee⁶. The compensation or sum payable on such a claim must be paid to the mortgagee or, if more than one, to the first mortgagee, and must be applied as if it were proceeds of the sale of the trees⁷.

Subject to these provisions, where any trees are comprised in a settlement⁸ and the owner is a tenant for life impeachable for waste in respect of the trees⁹, any compensation or sum so payable must be paid to the trustees of the settlement to be applied by them in accordance with the provisions of the Settled Land Act 1925¹⁰ as if it were proceeds of sale of timber cut and sold with the consent of the trustees under those provisions¹¹.

1 As to the meaning of 'owner' in relation to trees see PARA 135 note 3.

2 'Mortgage' includes any charge for securing money or money's worth; and references to a mortgagee are to be construed accordingly: Forestry Act 1967 s 35.

3 Ie under the Forestry Act 1967 s 11: see PARAS 135-136.

4 As to the Forestry Commissioners see PARA 34 et seq.

5 Ie under the Forestry Act 1967 s 26: see PARAS 148-150.

6 Forestry Act 1967 s 29(1)(a).

7 Forestry Act 1967 s 29(1)(b). As to the application by a mortgagee of proceeds of sale of the security see the Law of Property Act 1925 s 105; and **MORTGAGE** vol 77 (2010) PARA 472.

8 Ie within the meaning of the Settled Land Act 1925 s 1: see **SETTLEMENTS** vol 42 (Reissue) PARA 680.

9 As to the meaning of 'tenant for life' see the Settled Land Act 1925 s 19; and as to the rights of a tenant for life impeachable for waste in respect of timber see s 66; and **SETTLEMENTS** vol 42 (Reissue) PARA 848.

10 Ie the Settled Land Act 1925 s 66(2): see **SETTLEMENTS** vol 42 (Reissue) PARA 848.

11 Forestry Act 1967 s 29(3).

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(iii) Felling Directions

139. Forestry Commissioners' powers to give directions.

If it appears to the Forestry Commissioners¹ that it is expedient in the interests of good forestry, or for purposes connected with their duty as Commissioners², that any growing trees should be felled³ either in order to prevent deterioration or further deterioration in the quality of the timber in those trees or in order to improve the growth of other trees, they may give directions to the owner⁴ of the trees requiring him to fell them within such period, not being less than two years after the directions have become operative, as may be specified in the directions⁵. In considering whether to give directions the Commissioners must have regard to the interests of agriculture, and the amenity or convenience of any farm or dwelling house, or park usually occupied with a dwelling house, or of any land held inalienably by the National Trust⁶, and take into account any advice tendered by the regional advisory committee⁷ for the conservancy in which the trees are growing⁸. No directions may be given for the felling of any fruit trees or any trees standing or growing on land comprised in an orchard, garden, churchyard or public open space⁹, or within Greater London other than the Outer London boroughs¹⁰; and directions for felling trees growing on Crown land must not be given without the appropriate authority's consent¹¹. Directions must contain a statement of the grounds on which they are given¹².

1 As to the Forestry Commissioners see PARA 34 et seq.

2 I.e. their duty of promoting the establishment and maintenance of adequate reserves of growing trees: see PARA 38.

3 As to the meaning of 'felling' see PARA 120 note 2.

4 As to the meaning of 'owner' see PARA 135 note 3.

5 Forestry Act 1967 s 18(1) (amended by SI 1999/1747). In the case of trees to which a tree preservation order relates (see PARA 61), felling directions given after the date on which the order comes into force are sufficient authority for the felling, notwithstanding the order: Forestry Act 1967 s 18(5).

6 Forestry Act 1967 s 18(2). 'National Trust' means the National Trust for Places of Historic Interest or Natural Beauty incorporated by the National Trust Act 1907 (see s 3; and **NATIONAL CULTURAL HERITAGE** vol 77 (2010) PARA 979); and 'held inalienably' in relation to land belonging to the National Trust means that the land is inalienable under the National Trust Act 1907 Sch 1 Pt I and the National Trust Act 1939 s 8 (see **NATIONAL CULTURAL HERITAGE** vol 77 (2010) PARA 991); Forestry Act 1967 s 49(1).

7 As to regional advisory committees see PARA 36.

8 Forestry Act 1967 ss 18(2), 37(3)(b). As to the meaning of 'conservancy' see PARA 36 note 5.

9 Forestry Act 1967 s 19(1)(a). As to the meanings of 'garden' and 'public open space' see PARA 121 notes 4, 5.

10 See PARA 120 note 4. For another exception see PARA 141.

11 See PARA 134.

12 Forestry Act 1967 s 18(3).

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140. Objection to felling directions.

If any person to whom felling directions are given¹ is aggrieved by the directions on the ground that the felling is not expedient², he may request the Secretary of State or the Welsh Ministers³, by notice served⁴ within three calendar months⁵ of receipt of the directions, and in the prescribed manner⁶, to refer the matter to a committee for its report⁷. The report must be made to the person requesting the reference and to the Forestry Commissioners⁸, who must confirm, withdraw or modify the felling directions, in accordance with the report⁹.

1 As to felling directions see PARA 139 et seq.

2 I.e. under the Forestry Act 1967 s 18(1): see PARA 139.

3 As to the Secretary of State and the Welsh Ministers see PARA 2.

4 As to the service and verification of notices see PARA 154.

5 See PARA 125 note 4.

6 For the prescribed form see the Forestry (Felling of Trees) Regulations 1979, SI 1979/791, reg 10, Sch 1 Form 7.

7 Forestry Act 1967 s 20(1); Forestry (Felling of Trees) Regulations 1979, SI 1979/791, reg 10; and see PARA 125. The committee to which reference is made is that appointed by the Secretary of State or the Welsh Ministers under the Forestry Act 1967 s 27(1) (see PARA 127) to review the refusal of felling licences, and the committee has the same obligation to afford facilities to the person making the request, to inspect trees and to consider information furnished by the Commissioners: see s 27(3); and PARA 127.

8 The report is not made to, nor is it considered by, the Secretary of State or the Welsh Ministers: their duty is to consider the request for the reference and, unless he is or they are of opinion that the grounds for the request are frivolous, he or they must refer the matter to the committee: see the Forestry Act 1967 s 20(1) (amended by SI 1999/1747). As to the Forestry Commissioners see PARA 34 et seq.

9 Forestry Act 1967 s 20(2).

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141. Felling directions on dedicated land.

No felling directions¹ may be given in respect of trees on land subject to a forestry dedication covenant², or which are being managed to the satisfaction of the Forestry Commissioners³ in accordance with an approved plan of operations⁴ otherwise than under such a covenant⁵.

1 As to felling directions see PARA 139 et seq.

2 Forestry Act 1967 s 19(1)(b). As to forestry dedication covenants see PARA 116-119.

3 As to the Forestry Commissioners see PARA 34 et seq.

4 ie in accordance with the Forestry Act 1967 s 14(1): see PARA 128. As to approved plans of operations see PARA 116.

5 Forestry Act 1967 s 19(1)(c).

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142. Notice requiring purchase of trees or land after felling directions.

If any person to whom felling directions¹ have been given claims that compliance with those directions would involve him in a net loss², after taking into account any benefit arising from those directions in respect of other trees which he owns, he may give notice³ to the Secretary of State or the Welsh Ministers⁴ within three calendar months after receipt of the directions, and in the prescribed manner⁵, requiring either the Forestry Commissioners to buy the trees covered by the directions if he has the right to sell the trees for immediate felling⁶ or the Secretary of State or the Welsh Ministers, in any case, to acquire his interest in the land affected by the directions⁷.

1 As to felling directions see PARA 139 et seq.

2 There is no statutory definition of 'net loss', but in calculating it there must be taken into account any compensation received under a tree preservation order for a refusal of consent for the felling of a tree: Forestry Act 1967 s 21(7). As to tree preservation orders see PARA 61.

3 As to the service of notices see PARA 154.

4 As to the Secretary of State and the Welsh Ministers see PARA 2.

5 For the prescribed form see the Forestry (Felling of Trees) Regulations 1979, SI 1979/791, reg 11(1), Sch 1 Form 8.

6 Forestry Act 1967 s 21(1), (2)(a); Forestry (Felling of Trees) Regulations 1979, SI 1979/791, reg 11(1); and see PARA 125 note 4. As to the Forestry Commissioners see PARA 34 et seq.

7 Forestry Act 1967 s 21(2)(b) (amended by SI 1999/1747).

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143. Procedure after notice.

Where a notice requiring the purchase of the trees or the acquisition of the interest in the affected land is given, the Secretary of State or the Welsh Ministers¹ may, within three calendar months after receipt of the notice, either accept the notice², or refer the notice to a committee³, or revoke the directions to which the notice relates⁴. If the notice is referred to a committee, the report of that committee must be made to the person giving the notice, as well as to the Secretary of State or the Welsh Ministers, and must state whether the committee considers that compliance with the directions would involve that person in a net loss⁵ and, if so, what modifications, if any, of the directions would be sufficient to avoid such loss⁶. If the committee reports that compliance with the directions would not involve a net loss, the notice has no effect, but in any other case the Secretary of State or the Welsh Ministers may, at his or their discretion, within three calendar months after receiving the report, accept the notice or revoke the directions or modify the directions in accordance with the report⁷. If the Secretary of State accepts or the Welsh Ministers accept such a notice, the directions to which the notice relates cease to have effect⁸; and, if the notice requires the Commissioners to buy the trees to which the directions relate, the Commissioners are deemed to have contracted with the person giving the notice to buy the trees on the date of the acceptance of the notice, at such price, and on such terms (including terms as to the time within which the Commissioners may fell and remove the trees), as may, in default of agreement, be determined by the Upper Tribunal⁹. If, on the other hand, the notice requires the Secretary of State or the Welsh Ministers to acquire the interest of the person concerned in the land affected by the directions, the Secretary of State is, or the Welsh Ministers are, deemed to be authorised to acquire that person's interest in the land compulsorily¹⁰, and to have served a notice to treat in respect of that interest on the date of the acceptance of the notice¹¹. This notional notice to treat cannot be withdrawn¹².

If, after receiving a notice or a report of a committee, the Secretary of State or the Welsh Ministers do not take such action as he is or they are authorised to take within the prescribed period, the directions to which the notice relates cease to have effect at the expiration of that period¹³.

1 As to the Secretary of State and the Welsh Ministers see PARA 2.

2 Forestry Act 1967 s 21(3)(a) (ss 21(3)-(6), 22(1), (4) amended by SI 1999/1747); Forestry (Felling of Trees) Regulations 1979, SI 1979/791, reg 11(2); and see PARA 125 note 4. In reckoning the period of three months no account may be taken of any time during which proceedings on the notice are postponed: reg 11(2). As to postponed proceedings see PARA 144.

3 I.e. a committee appointed in accordance with the Forestry Act 1967 s 27 (see PARA 127): s 21(3)(b); and see PARA 140 note 7. The provisions of s 27(3) (see PARA 127) apply to such a reference to the committee: s 21(4).

4 Forestry Act 1967 s 21(3)(c).

5 Forestry Act 1967 s 21(4)(a) (as amended: see note 2). As to the meaning of 'net loss' see PARA 142 note 2.

6 Forestry Act 1967 s 21(4)(b).

7 Forestry Act 1967 s 21(5) (as amended: see note 2); Forestry (Felling of Trees) Regulations 1979, SI 1979/791, reg 11(3).

8 Forestry Act 1967 s 22(1), (2) (as amended: see note 2).

9 Forestry Act 1967 ss 22(3), 31(1)(a) (amended by SI 2009/1307). As to the procedure before the Lands Chamber of the Upper Tribunal see **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 744.

10 Ie under the Forestry Act 1967 s 39: see PARAS 45 et seq.

11 Forestry Act 1967 s 22(4)(a) (as amended: see note 2). The notice requiring the Secretary of State or the Welsh Ministers to acquire an interest in the land is deemed to include an offer by the person entitled to the interest to convey to the Secretary of State or the Welsh Ministers such easement or other right for the benefit of the land over adjoining land in which that person has an interest as may be agreed upon with the Secretary of State or the Welsh Ministers, or, failing agreement, be determined by the Upper Tribunal: see the Forestry Act 1967 s 31(1)(a) (amended by SI 2009/1307). The Secretary of State's and the Welsh Ministers' authority to acquire that person's interest in the land includes any such easement or right: Forestry Act 1967 ss 21(2), 22(4) (b).

12 See the Forestry Act 1967 s 22(5).

13 Forestry Act 1967 s 21(6).

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144. Proceedings in respect of felling directions.

A request for a review of felling directions by a committee¹ and a notice requiring purchase of the trees, or an interest in the land affected by the felling directions² may be made and given in respect of the same directions³. Where a request has been made for a review of felling directions, any proceedings relating to it may be postponed either until a notice has been given requiring the purchase of the trees or the owner's⁴ interest in the land or until the expiration of the period within which the notice might be given (whichever event first happens)⁵; similarly, where a notice has been given requiring the purchase of the trees or the interest in the land⁶, any proceedings consequent on that notice may be postponed either until a request has been made for a review of the directions or until the expiration of the period within which the request might be made (whichever event first happens)⁷. The Secretary of State or the Welsh Ministers⁸ may arrange for any proceedings before a committee on the notice to be taken concurrently with any proceedings before a committee on the request⁹. Felling directions are inoperative until the expiration of the period during which a request for a review, or a notice requiring purchase, may be made or given in respect of the directions, and, where such a request or notice is made or given, until the conclusion of any proceedings resulting therefrom¹⁰.

1 Ie under the Forestry Act 1967 s 20: see PARA 140.

2 Ie under the Forestry Act 1967 s 21: see PARAS 142-143.

3 Forestry Act 1967 s 23(1).

4 As to the meaning of 'owner' see PARA 135 note 3.

5 Forestry (Felling of Trees) Regulations 1979, SI 1979/791, reg 12(1).

6 Ie under the Forestry Act 1967 s 21(2): see PARA 142.

7 Forestry (Felling of Trees) Regulations 1979, SI 1979/791, reg 12(2).

8 As to the Secretary of State and the Welsh Ministers see PARA 2.

9 Forestry (Felling of Trees) Regulations 1979, SI 1979/791, reg 12(3).

10 Forestry Act 1967 s 23(2).

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145. Felling directions relating to Crown land.

Felling directions may be given in respect of trees growing on Crown land¹ only with the consent of the appropriate authority² and only to the extent of any estate or interest in it which is for the time being held otherwise than on behalf of the Crown³.

The Secretary of State and the Welsh Ministers⁴ are not authorised to acquire the interest of any person in Crown land by virtue of a notice requiring him or them to purchase it which is served by a person who claims that compliance with a felling direction would involve him in a net loss⁵, unless an offer has previously been made by that person to dispose of the interest to the appropriate authority on terms that the price payable for it is to be equal to, and is to be determined in default of agreement in like manner as, the compensation which would be payable in respect of that interest if it were acquired in pursuance of such a notice, and that offer has been refused by that authority⁶.

1 As to the meaning of 'Crown land' see PARA 134 note 2.

2 As to the meaning of 'appropriate authority' see PARA 134 note 4.

3 See the Forestry Act 1967 s 33(2), (3)(b); and see PARA 134.

4 As to the Secretary of State and the Welsh Ministers see PARA 2.

5 I.e. a notice under the Forestry Act 1967 s 21: see PARA 142.

6 Forestry Act 1967 s 33(4).

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(iv) Enforcement

146. Non-compliance with felling licence, directions or restocking notice.

If any works required to be carried out in accordance with the conditions of a felling licence¹ or with any felling directions² given by the Forestry Commissioners³ or with any restocking notice served by the Commissioners⁴ are not carried out in accordance with the conditions or directions or notice, a further notice⁵ may be given by the Commissioners:

- 456 (1) in the case of works to be carried out in accordance with the conditions or with a restocking notice, to the specified person⁶;
- 457 (2) in the case of works to be carried out in accordance with the directions, to the owner of the trees⁷,

requiring such steps as may be specified in the notice to be taken within the time, not being less than three calendar months after the notice has become operative, so specified for remedying the default⁸.

If after the expiration of the time specified in the notice, any steps required by the notice have not been taken, the Commissioners may enter on the land and take those steps⁹, and may recover from the person to whom the notice was given any expenses reasonably incurred in connection with the entry¹⁰.

If without reasonable excuse, a person fails to take any steps required by a notice, he is guilty of an offence¹¹.

1 As to conditions imposed on the grant of felling licences see PARA 124.

2 As to felling directions see PARA 139 et seq.

3 As to the Forestry Commissioners see PARA 34 et seq.

4 Ie under the Forestry Act 1967 s 17A: see PARA 153.

5 For provisions as to the service of notices see PARA 154.

6 Forestry Act 1967 s 24(1)(a), (2)(a) (s 24(2)(a) amended, s 24(2A) added, by SI 2006/780); applied to restocking notices by the Forestry Act 1967 s 17C (see PARA 153). The 'specified person' is, where the licence relates to land in England and Wales: (1) the applicant for the licence, if on the date the notice is served he has such estate or interest in the land as is referred to in s 10(1) (see PARA 123); or (2) in any other case, the owner of the land: s 24(2A) (as so added). As to the specified person in the case of a restocking notice see PARA 153 note 19. As to the meaning of 'owner' see PARA 135 note 3.

7 Forestry Act 1967 s 24(1)(b), (2)(b).

8 Forestry Act 1967 s 24(2); and see the Forestry (Felling of Trees) Regulations 1979 SI 1979/791, reg 13 (substituted by SI 1987/632); and PARA 125 note 4.

9 Forestry Act 1967 s 24(3).

10 Forestry Act 1967 s 26(1), which now also applies to restocking notices: see s 17C; and PARA 153. As to the recovery of expenses see PARA 150.

11 Forestry Act 1967 s 24(4). As to the penalty see PARA 152.

Halsbury's Laws of England/FORESTRY (VOLUME 52 (2009) 5TH EDITION)/2. TIMBER AND TREES/(4) THE FELLING OF TREES/(iv) Enforcement/147. Right to claim reference to committee.

147. Right to claim reference to committee.

If any person to whom notice has been given by the Forestry Commissioners¹ for non-compliance with a felling licence², directions³, or a restocking notice⁴, claims that the works in question have been carried out in accordance with the conditions or directions, as the case may be, or that the steps specified in the notice are not required by the conditions or directions, he may, by notice⁵ served on the Secretary of State or the Welsh Ministers⁶ in the prescribed manner and within the prescribed period⁷, request him to refer the matter to a committee for its report⁸. After considering the report of the committee on any such reference, the Secretary of State or the Welsh Ministers must confirm or cancel the notice to which the reference relates⁹. Any notice given by the Commissioners is inoperative until the expiration of the period during which a request may be made for reference to a committee, and, where a request has been made, until the conclusion of any proceedings arising under it¹⁰.

1 le under the Forestry Act 1967 s 24: see PARA 146. As to the Forestry Commissioners see PARA 34 et seq.

2 As to felling licences see PARA 120 et seq.

3 As to felling directions see PARA 139 et seq.

4 As to restocking notices see PARA 153.

5 As to the service of notices see PARA 154.

6 As to the Secretary of State and the Welsh Ministers see PARA 2.

7 The notice must be served within three calendar months after receipt by the owner of the land or trees of the Commissioners' notice requiring steps to be taken: Forestry (Felling of Trees) Regulations 1979, SI 1979/791, reg 14 (substituted by SI 1987/632); and see PARA 125 note 4. For the prescribed form see the Forestry (Felling of Trees) Regulations 1979, SI 1979/791, Sch 1 Form 9 (substituted by SI 1987/632). As to the meaning of 'owner' see PARA 135 note 3.

8 Forestry Act 1967 s 25(1) (s 25(1)-(4) amended by SI 1999/1747). The Forestry Act 1967 s 25 is applied to restocking notices by s 17C: see PARA 153. The committee must be appointed in accordance with the Forestry Act 1967 s 27 (see PARA 127): s 25(1). The Secretary of State and the Welsh Ministers are under a duty to refer the matter to the committee unless he is or they are of the opinion that the grounds are frivolous: s 25(3) (as so amended).

9 Forestry Act 1967 s 25(4) (as amended: see note 8).

10 Forestry Act 1967 s 25(2) (as amended: see note 8).

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148. Removal and disposal of trees by the Forestry Commissioners.

Where, in exercise of their powers to enforce licence conditions and felling directions¹, the Forestry Commissioners² enter on land and fell any trees, they may retain or dispose of the trees, but if a claim³ is made by the owner⁴ of any trees so removed they must pay to him a sum equal to the value of those trees after deducting any expenses reasonably incurred by them in connection with the removal or disposal⁵.

1 le under the Forestry Act 1967 s 24 (see PARA 146): s 26(1), (2).

2 As to the Forestry Commissioners see PARA 34 et seq.

3 The claim must be sent to the conservator for the conservancy in which the trees were growing: Forestry (Felling of Trees) Regulations 1979, SI 1979/791, reg 15. As to the meaning of 'conservancy' see PARA 36 note 5. For the prescribed form see Sch 1 Form 10.

4 As to the meaning of 'owner' see PARA 135 note 3.

5 Forestry Act 1967 s 26(2).

Halsbury's Laws of England/FORESTRY (VOLUME 52 (2009) 5TH EDITION)/2. TIMBER AND TREES/(4) THE FELLING OF TREES/(iv) Enforcement/149. Incidence of expenses incurred in complying with enforcement notice.

149. Incidence of expenses incurred in complying with enforcement notice.

Subject to any express agreement to the contrary, any expenses incurred by any person for the purpose of complying with a notice given by the Forestry Commissioners¹ requiring steps to be taken to remedy any default in carrying out works in accordance with the conditions of a felling licence or with any felling directions or restocking notice², and sums paid by any person in respect of any expenses resulting from steps taken by the Commissioners under such notice are deemed to be incurred or paid by that person:

- 458 (1) where the notice relates to works required to be carried out in pursuance of the conditions of a felling licence, for the use and at the request of the applicant or applicants for the licence³;
- 459 (2) where the notice relates to works required to be carried out in pursuance of felling directions, for the use and at the request of the person to whom the directions were given⁴; and
- 460 (3) where the notice relates to works required to be carried out in pursuance of a restocking notice, for the use and at the request of the person on whom the restocking notice was served⁵.

1 le under the Forestry Act 1967 s 24: see PARA 146. As to the Forestry Commissioners see PARA 34 et seq.

2 See PARA 146.

3 Forestry Act 1967 s 26(3)(a) (applied to restocking notices by s 17C: see PARA 153).

4 Forestry Act 1967 s 26(3)(b).

5 Forestry Act 1967 s 26(3) (applied to restocking notices by s 17C).

Halsbury's Laws of England/FORESTRY (VOLUME 52 (2009) 5TH EDITION)/2. TIMBER AND TREES/(4) THE FELLING OF TREES/(iv) Enforcement/150. Recovery of sums by and from the Forestry Commissioners.

150. Recovery of sums by and from the Forestry Commissioners.

Any sums recoverable by the Forestry Commissioners¹ in enforcing a felling licence or felling directions or a restocking notice², or from the Commissioners for trees removed by them³, may be recovered as a simple contract debt in any court of competent jurisdiction⁴.

1 le under the Forestry Act 1967 s 24: see PARA 146. As to the Forestry Commissioners see PARA 34.

2 As to the procedure in enforcing felling licences, directions and restocking notices see PARAS 146, 153.

3 As to the Commissioners' powers to remove and dispose of trees see PARA 148.

4 Forestry Act 1967 s 26(4) (applied to restocking notices by s 17C: see PARA 153). For the procedure on such recovery see **COURTS** vol 10 (Reissue) PARA 713; **MAGISTRATES** vol 29(2) (Reissue) PARA 826.

Halsbury's Laws of England/FORESTRY (VOLUME 52 (2009) 5TH EDITION)/2. TIMBER AND TREES/(4) THE FELLING OF TREES/(iv) Enforcement/151. Overriding of leases, covenants and contracts.

151. Overriding of leases, covenants and contracts.

Any person required by any directions¹ or notice² given by the Forestry Commissioners³ to carry out any works or to take any steps may carry out those works or take the steps notwithstanding any lease, covenant or contract relating to the trees or land affected by the directions or notice⁴.

1 Ie under the Forestry Act 1967 s 18: see PARA 139.

2 Ie notice under the Forestry Act 1967 s 24: see PARA 146.

3 As to the Forestry Commissioners see PARA 34 et seq.

4 Forestry Act 1967 ss 18(4), 24(5).

Halsbury's Laws of England/FORESTRY (VOLUME 52 (2009) 5TH EDITION)/2. TIMBER AND TREES/(4) THE FELLING OF TREES/(iv) Enforcement/152. Penalties on summary conviction.

152. Penalties on summary conviction.

Any person who fells¹ any tree without a felling licence (where such a licence is necessary)² is guilty of an offence and liable on summary conviction³ to a fine not exceeding level 4 on the standard scale or twice the sum which appears to the court to be the value of the tree, whichever is the higher⁴. Any person who, without reasonable excuse, fails to take any steps required by a notice given by the Forestry Commissioners⁵ is guilty of an offence⁶ and liable on summary conviction to a fine not exceeding level 5 on the standard scale⁷. Proceedings in respect of either of these offences may be instituted within six months of the first discovery of the offence by the person taking the proceedings, but no proceedings may be instituted more than two years after the date of the offence⁸. Proceedings are instituted for these purposes when the prosecutor commences his proceedings by laying the information and if it can properly be established, by inference or otherwise, that the information has been transmitted to the magistrates' court's fax machine, or by other electronic means, within time⁹.

1 As to the meaning of 'felling' see PARA 120 note 2.

2 I.e. under the provisions of the Forestry Act 1967 s 9(1); see PARA 120. In a case where it is common ground that no licence has been issued, it is for the accused to prove on the balance of probabilities that no licence was required: see *R (on the application of Grundy & Co Excavations Ltd) v Halton Division Magistrates' Court* [2003] EWHC 272 (Admin), [2003] 1 PLR 89, [2003] All ER (D) 322 (Feb), DC. See also *Forestry Commission v Grace* [1992] 1 EGLR 28, Lewes Crown Court.

3 For the procedure on summary trial see **MAGISTRATES** vol 29(2) (Reissue) PARA 681 et seq.

4 Forestry Act 1967 s 17(1) (amended by virtue of the Civic Amenities Act 1967 ss 15(2), 32(2); and the Criminal Justice Act 1982 ss 38, 46). As to the standard scale see PARA 32 note 6. As to the power of the Forestry Commissioners to require restocking after unauthorised felling see the Forestry Act 1967 s 17A; and PARA 153. As to the definition of 'anyone' in s 17(1) see *Forestry Commission v Frost and Thompson* (1989) 154 JP 14, DC.

5 As to the Forestry Commissioners see PARA 34 et seq.

6 See PARA 146 text and note 11.

7 Forestry Act 1967 s 24(4) (amended by virtue of the Criminal Justice Act 1982 ss 37, 39(2), 46, Sch 3; applied to restocking notices by s 17C: see PARA 153). This is without prejudice to the Commissioners' powers under the Forestry Act 1967 s 24(3) (see PARA 146): s 24(4).

8 Forestry Act 1967 ss 17(2), 24(4). This is an exception to the general rule that a magistrates' court may not try an information if it is laid more than six months from the time the offence was committed: see the Magistrates' Courts Act 1980 s 127(1); and **MAGISTRATES** vol 29(2) (Reissue) PARA 589. The exception does not apply to an offence under the Forestry Act 1967 s 30(5): see PARA 155.

9 *Rockall v Department for Environment, Food and Rural Affairs* [2007] EWHC 614 (Admin), [2007] 3 All ER 258, 171 JP 380. Provided that the information has been made available and is retrievable within time, it is immaterial that it was not, in fact, retrieved within time: *Rockall v Department for Environment, Food and Rural Affairs*.

Halsbury's Laws of England/FORESTRY (VOLUME 52 (2009) 5TH EDITION)/2. TIMBER AND TREES/(4) THE FELLING OF TREES/(iv) Enforcement/153. Restocking after unauthorised felling.

153. Restocking after unauthorised felling.

The Forestry Commissioners¹ may serve a notice (a 'restocking notice') on a person where it appears to them that he has committed an offence in England and Wales by carrying out unauthorised felling² and he has such an estate or interest in the land³ in question as enables him, with or without the consent of another person, to fell the trees⁴. A 'restocking notice' is a notice requiring the person on whom it is served:

- 461 (1) to restock or stock with trees the land or such other land as may be agreed between the Commissioners and him⁵; and
- 462 (2) to maintain those trees in accordance with the rules and practice of good forestry for a period, not exceeding ten years, specified in the notice⁶.

In deciding whether or not to issue a restocking notice, the Commissioners must have regard to the interests of good forestry and agriculture and the district amenities and to their duty⁷ of promoting the establishment and maintenance of adequate reserves of growing trees, and they must take into account any advice tendered by the regional advisory committee⁸ for the conservancy⁹ comprising the land to which the restocking notice would relate¹⁰. These provisions do not, however, apply to trees to which a tree preservation order relates¹¹.

A person on whom a restocking notice has been served who objects to the notice may, by notice served within the prescribed time and in the prescribed manner¹², ask the Secretary of State or the Welsh Ministers¹³ to refer the matter to a committee¹⁴ of reference¹⁵. Unless the Secretary of State is or the Welsh Ministers are of the opinion that the grounds of the request are frivolous, the matter must be so referred, and a report to the Secretary of State or the Welsh Ministers must be made when the committee has considered the matter¹⁶. After consideration of the report, the Secretary of State and the Welsh Ministers may direct withdrawal of the notice by the Commissioners, or notify the objector that it will have effect subject to any modification as the Secretary of State directs or the Welsh Ministers direct¹⁷.

The statutory provisions relating to the enforcement of licensing conditions¹⁸ are extended to the enforcement of restocking notices under these provisions¹⁹.

1 As to the Forestry Commissioners see PARA 34 et seq.

2 I.e. an offence under the Forestry Act 1967 s 17: see PARA 152.

3 I.e. such an estate or interest in the land in question as is mentioned in the Forestry Act 1967 s 10(1): see PARA 123.

4 Forestry Act 1967 17A(1) (s 17A-17C added by the Forestry Act 1986 s 1; Forestry Act 1967 s 17A(1) substituted, s 17A(1A) added, by SI 2006/780).

5 Forestry Act 1967 s 17A(1A)(a) (as added: see note 4).

6 Forestry Act 1967 s 17A(1A)(b) (as added: see note 4).

7 I.e. under the Forestry Act 1967 s 1(3): see PARA 38.

8 As to regional advisory committees see PARA 36.

- 9 As to the meaning of 'conservancy' see PARA 36 note 5.
- 10 Forestry Act 1967 s 17A(3) (as added (see note 4); amended by SI 1999/1747).
- 11 Forestry Act 1967 s 17A(4) (as added: see note 4). As to tree preservation orders see PARA 61.
- 12 The notice of objection must be served within three months after the receipt of the restocking notice: Forestry (Felling of Trees) Regulations 1979, SI 1979/792, reg 8A (added by SI 1987/632). For the prescribed form of notice see the Forestry (Felling of Trees) Regulations 1979, SI 1979/792, Sch 1 Form 6A (added by SI 1987/632).
- 13 As to the Secretary of State and the Welsh Ministers see PARA 2.
- 14 Ie under the Forestry Act 1967 s 27: see PARA 127.
- 15 Forestry Act 1967 s 17B(1) (as added (see note 4); s 17B(1), (2) amended by SI 1999/1747).
- 16 Forestry Act 1967 s 17B(1)(a), (b) (as added and amended: see notes 4, 15).
- 17 Forestry Act 1967 s 17B(2) (as added and amended: see notes 4, 15).
- 18 Ie the Forestry Act 1967 ss 24, 25, 26(1), (3), (4): see PARAS 146-152.
- 19 Forestry Act 1967 s 17C (as added: see note 4). For these purposes references in ss 24, 25, 26(1), (3), (4) to a felling licence are to be construed as references to a restocking notice, and the references in s 24(2A)(a)(i) (see PARA 146) and s 26(3) (see PARA 149) to the applicant for the licence are to be construed as a reference to the person on whom the restocking notice has been served: s 17C (as so added; amended by SI 2006/780).

Halsbury's Laws of England/FORESTRY (VOLUME 52 (2009) 5TH EDITION)/2. TIMBER AND TREES/(4) THE FELLING OF TREES/(iv) Enforcement/154. Service of documents.

154. Service of documents.

Any document required or authorised to be served under the provisions of the Forestry Act 1967 relating to the control of tree felling by the Forestry Commissioners¹ or by virtue of the procedure for compulsory acquisition of land contained in that Act², may be served on a person either by delivering it to him, or leaving it at his proper address³, or by sending it through the post in a registered letter addressed to him at that address or in a letter sent by the recorded delivery service and so addressed⁴. Any such document is duly served upon an incorporated company or body if it is served upon the secretary or clerk of the company or body⁵. If it is not practicable to ascertain the name or address of an owner, lessee or occupier of land on whom any such document is to be served, the document may be served by addressing it to him by the description of 'owner', 'lessee' or 'occupier' of the land (describing it) to which it relates, and by delivering it to some responsible person on the land, or if there is no such person on the land to whom it may be delivered, by affixing it, or a copy of it, to some conspicuous part of the land⁶.

1 le under the Forestry Act 1967 Pt II (ss 9-36): see PARA 120 et seq.

2 le the Forestry Act 1967 Sch 5 Pts I, II (see PARAS 46-48): Sch 5 paras 2(2), 7(2).

3 For these purposes the 'proper address' of any person upon whom any document is to be served is, in the case of the secretary or clerk of any incorporated company or body, that of the registered or principal office of the company or body, and in any other case, the last-known address of the person to be served (Forestry Act 1967 s 30(3)); but where the person to be served has furnished an address for service, his proper address for service is the address furnished (s 30(3) proviso).

4 Forestry Act 1967 s 30(1).

5 Forestry Act 1967 s 30(2).

6 Forestry Act 1967 s 30(4).

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155. Information for the purposes of service.

In order to enable them to serve or give any document or direction under the provisions of the Forestry Act 1967 relating to the control of tree felling by the Forestry Commissioners¹, the Commissioners may require the occupier of any land, and any person who either directly or indirectly receives rent in respect of the land, to state in writing the nature of his interest in the land and the name and address of any other person known to him as having an interest in it, whether as freeholder, mortgagee, lessee or otherwise². Any person who has been so required to give any information and fails to give it, or knowingly makes any misstatement in respect of it, commits an offence³.

1 In the Forestry Act 1967 Pt II (ss 9-36): see PARA 120 et seq. As to the Forestry Commissioners see PARA 34 et seq.

2 Forestry Act 1967 s 30(5).

3 Forestry Act 1967 s 30(5) (amended by virtue of the Criminal Justice Act 1982 s 38, 46). A person guilty of this offence is liable on summary conviction to a fine not exceeding level 1 on the standard scale: Forestry Act 1967 s 30(5) (as so amended). As to the standard scale see PARA 32 note 6. As to the procedure on summary trial see **MAGISTRATES** vol 29(2) (Reissue) PARA 681 et seq.